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PROCEEDINGS OF THE NATIONAL TAX ASSOCIATION

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PROCEEDINGS

OF THE

FIFTEENTH ANNUAL CONFERENCE

ON TAXATION

UNDER THE AUSPICES OF THE

National Tax Association

HELD AT MINNEAPOLIS, MINNESOTA
SEPTEMBER 18–22, 1922

EDITED BY

ALFRED E. HOLCOMB, Secretary

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1923

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Objects

Its objects shall be to formulate and announce, through the deliberately expressed opinion of an annual conference, the best informed economic thought and ripest administrative experience available for the correct guidance of public opinion, legislative and administrative action on all questions pertaining to taxation, and to interstate comity in taxation.—*Constitution of the National Tax Association,* Art. I, Sec. 2.

THE ANNUAL CONFERENCE

Organization of the Conference

The temporary and permanent chairman, secretary and official stenographer; address of welcome and response to the same; meeting place, accommodations for delegates, and all necessary preliminary details for each conference; and also the program of papers and discussions, shall be arranged for the conference by the executive committee of this association. All other details of the organization and work of the conference shall be arranged by the delegates present in such manner as they may from time to time decide. —*Ibid.,* Art. III, Sec. 8.

Time and Place

An annual national conference on taxation shall be held under the auspices of this association during the month of September in each year, or at such time and place as its executive committee may determine. The details of each conference shall be arranged by the executive committee in cooperation with such special and standing committees as may be created by this association at its annual meetings for such purpose. — *Ibid.,* Art. III, Sec. 1.

Personnel

The administrative personnel of each annual conference shall be composed of three delegates appointed by the governor of each state, and public officials holding legislative or administrative positions charged with the duty of investigating, legislating upon, or administering tax laws.

The educational personnel of each annual conference shall be composed of persons identified with universities and colleges that maintain a special course in public finance, or at which that subject receives special attention in a general course of economics; members of the profession of certified public accountants; and public men, editors, writers and speakers who hold no educational or official position but who have developed a special interest in the subject of taxation.—*Ibid.,* Art. III, Secs. 2 and 3.

Voting Power

The voting power in each conference upon any question involving an official expression of the opinion of the conference shall be vested in delegates appointed by governors of states, universities and colleges, or institutions for higher education, and state associations of certified public accountants, each of whom shall have one vote.

Voting by proxy shall not be allowed.

No member of this association shall have the right to vote in any annual conference by virtue of such membership.—*Ibid.,* Art. III, Secs. 4, 5 and 6.

Resolutions and Conclusions

The last session of each annual conference, or so much of it as may be necessary, shall be devoted to the consideration of the report of the conference committee on resolutions and conclusions. The report of this committee, as adopted by the conference, shall be its official expression of opinion, and it shall not be held to have endorsed any other expression of opinion by whomsoever made. The voting power of the conference upon an official expression of its opinion is limited with the purpose of safeguarding the conference from the possibility of having its expression of opinion influenced by any class interest; or consideration for those who devote their time to the work or management of this association; or favor for those who contribute money for its support. The annual conference will be the means used by the association for carrying into practical effect its purpose to secure an expression of opinion that will formulate and announce the best informed economic thought and ripest administrative experience available for the correct guidance of public opinion legislative and administrative action on all questions pertaining to taxation, and to interstate comity in taxation.—*Ibid.*, Art. III, Sec. 7.

Program and Rules

The program as printed and distributed shall be adopted and followed with such modifications as may be required by reason of absence, vacancies, or other cause. The usual rules of parliamentary procedure shall control. Each speaker shall be strictly limited to twenty minutes for the presentation of a formal paper. He shall be warned two minutes before the expiration of such period. The time of a speaker may be extended by unanimous consent of those present. In general discussion each speaker shall be limited to five minutes and no person shall speak more than once during the same period of discussion until others desiring to speak have been heard.

Voting Power. The voting power of the conference, upon any question involving an official expression of opinion, shall be vested in delegates in attendance, appointed by governors of states, territories, provinces or possessions, by universities and colleges or institutions for higher education, and by state associations of certified public accountants. No person shall have more than one vote by reason of his appointment as a delegate from more than one source. The voting power shall be by ayes and nays, unless a roll call shall be demanded. On all other questions the voting shall be by vote of all in attendance. The receipt of reports made to this conference by committees of the National Tax Association shall not be considered as expressing the opinion of the conference on the subjects treated.

Committees

The following committees shall be appointed: (a) A committee of three on credentials, to be appointed by the chairman, who shall designate the chairman of such committee. (b) A committee on resolutions, composed of one delegate from each state, territory, possession or province, selected from among the delegates duly appointed; but in case of the non-attendance of any such, any person present from such locality may be appointed. The chairman shall designate the chairman of this committee, such person to arrange for its organization. All resolutions involving an expression of opinion of the conference on the subject of taxation shall be read to the conference before submission to the committee, and shall be immediately referred without debate.—*Rules of Procedure,* see p. 2.

FIRST SESSION

Monday Evening, September 18, 1922

Organization of Conference

Samuel Lord, President of the National Tax Association, presiding.

President Lord: It is my privilege to call the fifteenth annual conference to order. Possibly as a preface to what we intend to do this evening, it will be in order for me to explain to you, and especially the newer members of the conference, just how the conference functions. There is an association known as the national tax association, which is a perpetual institution, to which we invite all of you to become members, and all of you can become members by contributing a five-dollar membership fee, which will entitle you to a copy of the bulletin, which is published monthly during the year, except in July, August and September, and to a copy of the proceedings of this conference. The conference is a separate body from the national tax association. It effects its own organization, makes its own rules, conducts matters to suit itself, and it is called for the purpose of a fair and free expression of opinion in regard to the burning tax questions of the day.

Of course in a large body of this kind, it is necessary to have certain rules of order, and discussion has to be somewhat limited in extent. It is even necessary to apply a time limit to papers that are presented and to committee reports.

I think with this brief statement we have reached the stage where we ought to organize the conference by the selection of a permanent chairman and a secretary, and I shall be pleased to receive nominations for those positions.

Celsus P. Link of Colorado: It occurs to me that in years past we have wasted a good deal of time in temporary organization. Really, while there are two organizations, as the chairman has explained, it amounts to one, just the conference. I think we will save time and it will be better business to consolidate the association and the conference at this time. I therefore move that our president, Mr. Lord, and our secretary, Mr. Holcomb, be the permanent officers of this conference.

CAPTAIN W. P. WHITE of Massachusetts: Second the motion.

PRESIDENT LORD: I recognize Senator Law of New York.

WALTER W. LAW, JR.: While I think it is particularly appropriate that the officers of the association should also be the officers of the conference, in this particular case it is a very pleasant thing, and I am glad to second the motion made by Mr. Link.

MR. LINK: Members of the conference, the motion has been made and seconded. Are there any remarks?

(No response)

MR. LINK: If not, those in favor say aye.

(Ayes)

MR. LINK: It is unanimous.

CHAIRMAN LORD: I thank you for the confidence expressed in this vote. I cannot say it is an unusual compliment because it has become the usual thing to do, but I appreciate it none the less and you have my most sincere thanks.

It is customary at this time to adopt rules of procedure. We have had fifteen years' experience in these matters, and we know pretty well what is needed. Can anyone suggest what rules shall govern the body in the conduct of its affairs?

SECRETARY HOLCOMB: Mr. Chairman, acting upon past experience, I move you that the rules that have been used in previous years, and particularly those that were adopted last year, be the rules of this conference, and in order that they may be known, I suggest that I read them in detail. While these rules are more or less perfunctory, it still remains true that there are times when it will be desirable to apply them with some sort of rigor.

CAPTAIN WHITE: Motion seconded.

CHAIRMAN LORD: Moved and seconded that the rules of the fourteenth conference shall be the rules of the fifteenth, and the secretary will read the rules.

The rules read by the secretary were as follows:

PROGRAM AND RULES

That the program as printed and distributed be adopted and followed with such modifications as may be required by reason of absence, vacancies, or other causes. The usual rules of parliamentary procedure shall control. Each speaker shall be strictly limited to twenty minutes for the presentation of a formal paper. He shall be warned two minutes before the expiration of such period. The time of a speaker may be extended by unanimous consent of

those present. In general discussion each speaker shall be limited to five minutes and no person shall speak more than once during the same period of discussion until others desiring to speak have been heard.

Voting Power. The voting power of the conference upon any question involving an official expression of opinion shall be vested in delegates in attendance appointed by governors of states, by universities and colleges or institutions for higher education, and by state associations of certified public accountants. No person shall have more than one vote by reason of his appointment as a delegate from more than one source. The voting power shall be by ayes and nays, unless a roll call be demanded. On all other questions the voting shall be by vote of all in attendance. The receipt of reports made to this conference by committees of the National Tax Association shall not be considered as expressing its opinion on the subjects treated.

Committees. (a) A committee of three on credentials, to be appointed by the chairman, who shall designate the chairman of such committee. (b) A committee on resolutions, composed of one delegate from each state, selected from among the delegates appointed by governors; but in case of the non-attendance of any such, any person from such state may be appointed. The chairman shall designate the chairman of this committee, such person to arrange for its organization.

Resolutions. All resolutions involving an expression of opinion of the conference on the subject of taxation shall be read to the conference before submission to the committee, and shall be immediately referred without debate.

SECRETARY HOLCOMB: I may suggest here that we have construed "states" to include provinces.

CHARLES J. TOBIN of New York: Just a question of inquiry as to what position the conference will take as to a delegate from the District of Columbia.

CHAIRMAN LORD: I shall hold that he is entitled to vote as a delegate.

MR. TOBIN: I thank you.

CHAIRMAN LORD: You have heard the rules read; are you ready to adopt them?

(Call for the question)

(Ayes and noes)

CHAIRMAN LORD: The ayes appear to have it, the ayes have it and the rules are adopted. I will appoint a chairman of the com-

mittee on resolutions and announce his appointment before the meeting adjourns. A committee on credentials seems to be one of the committees that should be appointed. The rules provide that each state shall select its own member of the committee on resolutions, and I would suggest that immediately after we recess the members of the different states get together and make their selections and announce them to the secretary or to the chairman of that committee. I will also announce the committee on credentials, although there will probably be nothing for such a committee to do, a little later. There is also another commtitee that I think ought to be taken care of at this time, which has to do with the national tax association rather than with the conference, a nominating committee to nominate men in place of the retiring members of the executive committee and to nominate a president and vice-president of this association for the coming year. If a motion to name such a committee is made by any member of the association, I shall be glad to entertain it.

Mr. Tobin: I move that the usual committee of five be appointed by the chair as a nominating committee of the national tax association, to bring in the necessary nominations for officers and executive committee.

Captain White: Second the motion.

Chairman Lord: It has been moved and seconded that a nominating committee of five be appointed by the President of the national tax association, for the purpose of selecting officers for the coming year. Are there any remarks?

(No response)

Ayes and noes.

Chairman Lord: The ayes have it and I will designate the committee later on.

The Minnesota tax commission in the fifteen or sixteen years that it has been in existence has spent many weeks in the preparation of reports designed for the benefit of the members of the legislature. It has been something of a problem with us to determine how many members ever look inside of the two covers of those books. Brother Armson and I have made some calculations and we figured ourselves lucky if two per cent of the membership even look at our labored productions. I don't know as I blame them any. It is rather tiresome reading; but I should like to feel that they are a little more sought after. Our last legislature appointed an interim commission to study the question of taxation, and it has been our hope that possibly this commission might be tempted to look inside of these books and see if we have produced anything worth while in the way of suggestions for legislative action.

We have with us tonight the chairman of the commission, the speaker of the House of Representatives of Minnesota, and it gives me great pleasure at this time to introduce him to this audience as the presiding officer of this session of the conference—Mr. Nolan.

W. I. NOLAN, presiding.

CHAIRMAN NOLAN: Mr. President and ladies and gentlemen: Senator Lord has stated to you that the legislature of Minnesota probably needs some education along tax lines, or at least the inference is that we ought to know more about taxes than we do. As was stated, the last session of the legislature appointed an interim committee for the purpose of studying taxation, and we have looked forward to this conference as one of our principal sources of information. If we do not get out of this conference something that is really worth while, that will help us in reshaping the tax laws of this state, we are going to be disappointed. Now, I realize that it is not the duty of a presiding officer to make the speeches, and with that idea in view I am going to delegate to others the duty of dropping the seed. It is customary in gatherings of this kind to be welcomed by official representatives, and tonight we are represented by the City of Minneapolis and by the State of Minnesota, and I am first going to call on our honored Mayor. Here in Minneapolis we are proud of many things. We believe that we have a city for which we do not have to apologize, and we know that we have a Mayor for whom we do not have to apologize. It is my pleasure at this time to introduce to you the Mayor of Minneapolis, Col. George E. Leach.

GEORGE E. LEACH, Mayor of Minneapolis: It is a distinct pleasure for me to have this opportunity of welcoming this convention to Minneapolis. I have only been a professional politician a short while, but I have learned this, that when you start out to run for office, the main thing that the voters seem to be interested in is: how are you going to reduce our taxes? It is often very difficult to tell them how they are going to be reduced, if you only have one term. And then every other person that calls at your office wants to know why you don't reduce them; so I think I can say that probably the people of Minneapolis could extend no warmer welcome to any group of men and women in the country than to this convention to discuss taxes. It certainly is an unlimited subject and a great field for endeavor; and sometimes I think that the people of this country are a little unreasonable because a complete system has not been devised for distributing taxes more equitably, and I would like to call your attention to the City of Minneapolis. Take, for instance, the ground we are standing on. In 1855, Mr. Stone, a homesteader of the Uniter States Government, built a cabin here. This was a 160-acre homestead in 1855, and

after he proved up on it he sold it to a man named Fridley. Mr. Fridley bought it for two thousand dollars, and I think about ten years after, it was sold to a Mr. Snyder for three thousand seven hundred and fifty dollars, and platted, and last year there was a trust deed given to the Curtis hotel people for six hundred thousand dollars for a little piece of this homestead. Now, that is quite an achievement in a short time. My father lived here before the first piece was homesteaded. My mother is still living and she was here too, so in one generation this land has increased from a few dollars an acre that the homesteader paid for it, to six hundred thousand dollars for a few lots off the corner of it, that he probably would not have noticed in the division of the land. That must create conditions that make readjustment of taxes very difficult.

I have only one thing to say—I have no constructive message to bring to you—but I wish you would fix it so that the small home owner won't have to pay any taxes at all. I have not even got as far as the small home owner, but we have a lot of people in Minneapolis and we are trying to build up a happy city, and the only way you can do that is to have everybody own his own home, which is a most desirable condition in any country. When he has only started to own this home, the taxes make it very difficult. So if you can arrange so that the man who has a two or three thousand dollar home won't have to pay any taxes on his home until it is paid for, we shall all be very much obliged to you.

I wish to assure you that every one in this city is very proud to have you here. I hope you have a good time. I cannot help you much in the convention, but if you step on the gas too fast or get into any difficulties with the police department, I shall be glad to see you in the city hall. In any event, I hope you will have all the fun you can, and I assure you again that Minneapolis is very proud to have you here. (Applause)

Chairman Nolan: Unfortunately the governor of the state is out of the city at this time, and so as it is impossible to furnish a full portion we will try to do the best we can with a half portion, and it is my pleasure at this time to introduce to you on behalf of the State of Minnesota our Lieutenant Governor, Corporal Louis Collins.

Lieutenant Governor Louis Collins: Ladies and gentlemen. I suppose that you expect me to come back at the speaker, but I am not going to do it, because I tried it once and I want to tell you about that, and by the way I am going to limit myself to your five-minute rule, because after these rules were read, I was talking with Judge Hough of Indiana: I said, "those are good rules," and he said, "yes, the best one is the five-minute rule"; but I am not

going to try to get back at the Speaker because of a thing that happened in the governor's office. They have a picture of the battle of Nashville, painted by Pyle, in the governor's office. We were looking at the picture together one day. My father and the Speaker's father, the elder Mr. Nolan, were in the same regiment at the battle of Nashville. The picture shows the charge of the regiment at Nashville. As we were looking at this picture one day Bill said, "my father was in that fight," and I swelled up—in so far as a man of my size can swell up—and I says, "so was mine". "Well," he said, "my father was all through that charge." I said, "yes, so was my father." I said, "yes, and by the picture, my father is leading your father by one hundred feet in that charge." I laughed at my own joke. The speaker said, "yes, and coming back they tell me your father led by one hundred yards."

(Laughter)

I am very sorry Governor Preus cannot be here to greet you. He sent me word to come over here to represent him. I asked him what he wanted to say, and he said he would put no limitations on me but wanted me to welcome you to the State of Minnesota. I am not going to overdo this five-minute rule.

I will tell you a story I heard about a public speaker talking on a platform. Somebody in the gallery yelled "louder," and a fellow sitting down in the parquet, within seeing and hearing distance, said, "can't you hear him?" And the fellow said, "no," and yelled, "louder". The fellow down below says, "oh, keep quiet, shut up, and thank the Lord."

I don't think you want to hear me talk much about the State of Minnesota, and you are going to have an opportunity of seeing something of the state.

I want to supplement Mr. Leach's statement about the value of this property, in one feature. In 1803 the City of Minneapolis was sold to the United States Government by France for seven cents an acre, and you experts on valuation step out and look around the city and see what you think of that purchase. We think it is a very good one.

Just a moment about something that Senator Lord has said which I wish to emphasize a little. I think one of the problems for this conference is the problem he called attention to, and I think you men and women of other states have this same difficulty facing you. You know the subject of taxes is a subject which is much talked about, and about which little is known. Men get up and yelp for lower taxes. We want to lift the tax burden, we want to do it, but don't know how to do it. The State of Minnesota for fifteen years has had a tax commission, and I know you ladies and gentlemen who have followed this association know that we have a good one. Your honorable president is a member of our commis-

sion and was a charter member of it, and I know that you know that he is an authority on taxation, and I know that you know one of the members of our commission, Mr. Armson, is a national authority on the subject of taxation. Now, these men during fifteen years — these and others, most of them experts — have been trying for the State of Minnesota to solve taxation. They are up against this situation: the state officeholders and members of the legislature like to talk taxes when they don't have to go into detail, but when it comes to the proposition of studying taxation and trying to do something, they all shy away from it. You know that is true in your different states. A man comes down to the legislature. He said at home he was going to decrease the burden of taxes. He has gone on the platform — candidates do this in this state, and have done it recently — and opposed some project, some new state department, or the increasing of salaries for some state officials, or something.

In the state of Minnesota, from general tax levies of 1921, not a cent goes for state expenses. Our state administration is taken care of from gross earnings taxes and special taxes, but they howl about the increase in state taxes. In Minnesota I think approximately somewhere between 70 and 80 per cent of our taxes are for local purposes, that is, they are for roads or bridges or for some other such local purpose, as education, and are levied by local authorities.

My point is this, that when you are sick you go to a doctor, and when your automobile is out of order you go to a mechanic, and when you solve a taxation proposition you go to tax experts, and I hope you gentlemen will help us in arousing the people and arousing the politicians to that fact. I thank you.

Chairman Nolan: Now, that you have been duly and properly welcomed by the representatives of the city and the state, it is my pleasure to introduce to you Judge William A. Hough of Indiana, who will respond on behalf of the Tax Association.

W. A. Hough of Indiana: Mr. Chairman and ladies and gentlemen: I am sure it is a very great pleasure for me to respond on behalf of the Tax Association to the gracious words of welcome we have had from the Mayor and from the Lieutenant Governor. I don't believe I can agree with the Speaker. He said that it was unfortunate that the governor could not be here. I think we are very fortunate indeed to have the lieutenant governor here and to hear the words of wisdom that fell from his lips.

A good many of the men who are here were rather in hopes that the proximity to the Canadian border would produce some little change, perhaps, in the situation here, but we have not had any intimation of any change yet, except in the words of the Mayor,

when he said he would help us out if we got mixed up with the police, and that sounded very cheering indeed. I don't exactly understand why somebody hasn't said something about St. Paul. I was in South Bend last week and gave an address before the national real estate dealers association, which was meeting there, and one of the speakers said that Minneapolis was a very religious city, and that the religion consisted in loving the Lord and hating St. Paul. I feel that the gentleman was mistaken about it, because I think perhaps that instead of calling Philadelphia the city of brotherly love, we ought to call St. Paul and Minneapolis the twin cities of brotherly love, because we have not found any of that feeling in Minnesota since we have been here, and we have seen a number of citizens of both places. I think that the problems that the Mayor spoke about here all arise after a man has been elected instead of before. It is always an opportunity for one to say that you are in favor of reducing taxes, that you are in favor of building new roads, and that you are in favor of building even new school buildings and paying school teachers better salaries. All of those things cost money. Your lieutenant governor asked me a minute ago if there wasn't some trouble because the legislators did not consult with taxing experts. Now, the opinion that was given by the greatest taxing expert we have had in the State of Indiana was that there was only one real solution to the taxing problem, and that was to give everybody in the state who wanted a bonus, a bonus, and to exempt everybody else from taxation; and that would be more satisfactory, Mr. Mayor, than simply exempting the property of the small house owner.

We have all sorts of questions presented to us in regard to exemption from taxation. I have on my desk down at Indianapolis today a fifty-page letter, written on both sides, in indelible pencil, by a man who owns eight hundred acres of land, and he wants all land exempted from taxation, on the ground that he produces food, and if we would exempt all land from taxation the reduced price of bread, of corn and wheat and hogs would give to the people all that we collect in the way of taxes from the farmers. The farmer isn't the only man who wants to be exempted from taxation. Everybody who has a public utility also wants to be exempted from taxation. All of our secret orders want to be exempted from taxation; all of our churches want to be exempted from taxation; and we have a large number of crafty taxpayers who exempt themselves from taxation, without appealing to our board for any aid.

Ladies and gentlemen of the conference, there is only one solution to the question of taxation and to that great problem which has existed since the very inception of civilization. That solution consists in expending public money just exactly as it is expended in a well-conducted private business; when that is done, when it be-

comes possible to do that, you will have reached the only sensible solution that there is for the question of taxation. You will not see then in one city the tax rate up to more than five per cent and in another city below two per cent, which we have in the State of Indiana. One of them is managed well and the other one is not managed well. That is all there is to it. Every city ought to be run exactly as though it were a splendidly managed private business, and in order to do that, the people who now do not take any interest in taxation must take interest in it, or this great problem will overwhelm many of the municipalities of the United States of today. There are some of them that are on the verge of bankruptcy, and in our own state there is only one power that is standing between bankruptcy and one-third of our townships, and that is the state board of tax commissioners, which has the power to prevent them from creating indebtedness when it is not necessary. You all have to work at it. Business men, lawyers and doctors and others must have the subject explained to them so they will understand that a reduction in the valuation of their property will not in any way affect the amount of taxes which they pay, but that it depends upon the amount of money which is expended. We have organizations all over our state, and you no doubt have in yours, seeking to bring down the valuations that are placed upon particular classes of property. That will not help the situation. There is no help for it excepting the help that must come from every man who pays taxes. He must look into how the money is expended and to see that it is not thrown away, and your officers need that help. They cannot see everything that is done, and they cannot control everything that is done. Thousands of dollars will be expended without anybody knowing about it, and we not only have to assist in paying the taxes, but we, as taxpayers, all over the United States, must assist in expending that money. That reminds me of a story. There was a man in our town a good many years ago of some very considerable means. He had a nephew, sort of a ne'er-do-well boy, who chased around to the races, and to the state fair, and such places as that, and did no good, and his uncle finally took him in hand and sent him to a business college over at Indianapolis. The young man had been over at the business college long enough to get through, and he wrote a letter to his uncle saying that he had done very well and he had a nice position over there. His uncle wrote to him and asked him what he was doing and where he was employed, and he received no answer. One night the uncle came into Indianapolis very late, and down on South Illinois Street he dropped into one of those cheap old-fashioned restaurants, where everything is five cents—five cents for a cup of coffee, five cents for mashed potatoes, five cents for porterhouse steak, five cents for everything; it would buy everything

on the bill. He walked in and looked around. He did not like the looks of the place but he thought it was the only place he would find open. He sat down, and then looked up in utter astonishment, and saw his nephew there with a napkin strung over his arm. He looked up at him and said, "My God, Horace, you don't work here?" Horace looked down at him. He says, "yes, I work here, but by God I don't eat here."

The taxpayers of the United States have got to work here and eat here both; they have got to be on the job in regard to national taxation and in regard to state taxation. I see the lieutenant governor looking at me as though my five minutes were about up, and I guess that is so, but I want to leave this message with you, and I am sure I am expressing the sentiment of every person who is here when I say we are glad to be here with you, and that we thank your officers for their kindly words of welcome. Thank you.

Chairman Nolan: I think it is up to the chairman to make some explanations. Evidently from the remarks that have been made recently, the chairman's intentions have been misconstrued. In the first place, I did state that it was unfortunate that the governor was not here this evening, but that was not intended as a reflection upon the substitute for the governor. As a matter of fact, the lieutenant governor is always capable and always willing to fill, and fill efficiently, the position of the governor, and we all realize that if the governor is out of the state we are in a position to furnish a substitute that is almost as good as the real thing.

Now, something was said about the City of Minneapolis and the City of St. Paul. We who live here do not realize that there are any differences between the two cities. Occasionally people come from the outside and comment upon it, but we are working together, both Minneapolis and St. Paul, in the best spirit of mutual helpfulness and with neighborly spirit. That, we feel, ought to be a good model for other people. Both Minneapolis and St. Paul are working together for the upbuilding of the northwest and the State of Minnesota, and you will find while you are here, that there is no feeling between the two cities. There is a little very healthy competition, but it don't get to the point where we go out gunning for one another. And that same spirit of neighborliness we feel ought to exist not only among our communities and the states in this Union, but we feel also a spirit of neighborly feeling for our friends to the North, and so it has been suggested, as long as these happy speeches were being made, that at this time we might call upon some one to speak for the Dominion of Canada, and although this has not been agreed to in advance, I am going to call upon Mr. J. T. White, Solicitor to the Treasury of the Province of Ontario.

Mr. J. T. White, Solicitor to the Treasury of the Province of

Ontario: Mr. Chairman, ladies and gentlemen: I am very glad of the opportunity of saying a few words tonight. I have attended these conferences every year since 1915, and I have found them of great benefit to me. We find that we can come over here and learn a great deal, not only from your experience in matters in which you have been successful, but we learn a little from your mistakes. We shall be glad to have you over in Canada some time, and if you cannot learn from us any other way, you can probably learn something from some of our own mistakes, because we probably have a few. One of them was when we tried in the western provinces to exempt improvements from taxation. That does not seem to have worked out as well as was expected, but possibly if we could exempt all the small householders, as the lieutenant governor suggested, it might be better. We tried that in Toronto to a certain extent.

I have not noticed any evidence of ill-feeling between Minneapolis and St. Paul. In fact we always combine the two together in one city. It is a little different in Ontario. The city I live in has no immediate neighbors in the way of other large cities, but the other cities of the Province, bearing in mind the fact that Toronto is the capital and gets universities and normal schools and central prison, and things like that, are inclined to call Toronto "hog-town" occasionally, but that probably is a matter that will have to be adjusted between the different municipalities in time.

I want to thank you for this opportunity of saying a few words, and I want to say again that I have derived a great deal of assistance from the meetings that I have attended.

Mr. Hough: Tell them one way you raise taxes there that we don't raise them.

Mr. White: Regarding the race tracks?

Mr. Hough: Yes.

Mr. White: I must apologize possibly for participation of the government in the tax on a gambling institution, such as the race track, but it happens that in the province of Ontario we are not responsible for the location of the race tracks. There the dominion government takes that responsibility and allows, under certain restrictions, race-track gambling in the province. Some of the tracks are located close to the border, so that we have a little opportunity to get a little money out of Buffalo and Detroit. In fact, that was one of the excuses we used for putting on the tax, that we are going to make the Americans pay part of the tax. We tax the race tracks seventy-five hundred dollars a day. They are allowed a race meeting of seven days each, and in addition to that we instruct the race-track owners to deduct from the winning tickets

five per cent of the amount that they are entitled to on that ticket. The system of betting is mutual betting and all the money paid goes into the pool, and the race track deducts three per cent off this, and five per cent for the government, and we will get a revenue close to four million dollars this year out of race tracks. (Applause)

CHAIRMAN NOLAN: I am sure we enjoyed the remarks of Mr. White, and I presume now the time has come for the formal number on the program. Mr. White in his remarks said that they were in the habit of speaking of Minneapolis and St. Paul as one. We have no objections to this as long as you do not refer to the combination as St. Paul.

Personally I have enjoyed the privilege of introducing these gentlemen to you tonight. I haven't a great deal of sympathy for the average introducer because I have had some experience with it. Not long ago I was on a program and the chairman happened to be a gentleman who was somewhat deficient in the art of oratory, and he was conscious of the fact, and he tried to make his condition plain to the audience. He said, "you know I cannot make a speech, I never could make a speech, but at the same time, if you don't know, you ought to know that some of the most brilliant men the world has ever produced were poor speech-makers, whereas some of the most eloquent orators have been only boneheads." It is my pleasure at this time to introduce to you an eloquent orator. The next number on the printed program is a review of recent tax legislation, by William E. Hannan, legislative reference librarian, New York state library. Mr. Hannan is not here and so his paper will be read by Mr. Holcomb.

SECRETARY HOLCOMB: That is a hot one. Mr. Chairman, before proceeding to the dry subject of taxation from this delightful experience which we have had, I think I had better make a few announcements, because it might be that quite a few might think they had to go home or go to some other engagement, and if I should undertake to read the digest of legislation of the last year, I am sure there would not be anybody here to listen to my announcements.

CHAIRMAN NOLAN: Play safety first, Mr. Holcomb.

SECRETARY HOLCOMB: The committee on arrangements desires me to announce that there will be a luncheon for the ladies at the New England furniture company. I don't know what that means. Furniture is rather hard eating. All those wishing to attend the luncheon kindly register at the information booth as early as possible. Automobiles will be at the Third Avenue entrance to convey ladies to the luncheon. One o'clock tomorrow.

There are one or two other things on the blackboard. You will see that I have noted a change in the program. I did that because I thought that possibly some people might be counting upon some particular subject. The taxation of natural resources, which is number three on the second session, is slated to come Tuesday morning. Senator Vaughan has wired that he is detained in Arkansas and won't be here until Wednesday, so that for the present we have thought it desirable to suggest that that be placed at number two of the tenth session, Thursday evening. At that session the program as arranged calls for the presentation of the report on the taxation of migratory live stock, and that will be substituted at tomorrow morning's session.

I want also to say that representative McFadden, chairman of the banking and currency committee of the House of Representatives—representative from Pennsylvania—has found it utterly impossible, as we all appreciate, to get away from Washington, so that at the Wednesday evening session he will not be here. The session being on tax-exempt securities, we have thought so important that it should be handled, and in spite of the fact that the program is very full, we will attempt to go on with it. I see the arrival, for instance, of a gentleman who is very competent to deal with that subject, Mr. McKenzie of the farm bureau. I know he will be glad to help us in the treatment of that subject, among others; and it is quite likely that Dr. Adams of Yale will be here by that time.

Now, coming to the oratory, I have here a 41-page digest of the legislation in this country at the last session. This digest was prepared by William E. Hannon, and I think the members of the association and the delegates and those who are constantly having need of reference to tax laws, are greatly indebted to those who prepare these annual digests. It is in my own experience, and doubtless in the experience of many of you, of very great interest to be able to deal with comparative legislation in taxation. The mind instantly turns to another state when you are thinking of tax legislation. This digest has usually been read at a later session. It had occurred to us that possibly it would be of help if the high spots could be readily obtained here at this session, or at least very hastily referred to, so that people might begin to think about them and they might want to confer with some one from some other state and ask, how about a certain law that was passed by the last legislature, and therefore at the start of the meeting we thought that it might be helpful to have some sort of a summary made. Of course this arrived in the mail today with a letter expressing the regret of the writer, and therefore it has been quite impossible for me to make any adequate summary, and in reading this I will have to think a little ahead and read at the same time; therefore I shall

be somewhat halting and hesitating, because I have got to see what I am coming to as I am reading. It is one of those things that a tax man is able to do. He may not be an orator, but he sometimes can read between the lines or ahead of the lines. This is by William E. Hannan of the legislative reference library of the New York state library, a man of long experience in dealing with tax legislation and other legislation.

REVIEW OF TAX LEGISLATION IN THE VARIOUS STATES FOR 1922

WILLIAM E. HANNAN
Legislative Reference Librarian, New York State Library

Since the last conference of the National Tax Association ten states have held regular and five states extra or special legislative sessions. Each state, to a greater or less degree, made some change in its revenue system. The chief interest, however, is this year, as last, in the constitutional rather than in the statutory field of taxation. One state, New Mexico, adopted two amendments in November, 1921 and thirteen states will this year at the general or a special election vote upon amendments to the revenue sections of their constitutions.

Constitutional Amendments on Taxation Adopted 1921

New Mexico appears to be the only state that in 1921 voted upon amendments to the revenue section of the constitution. This state adopted an amendment which exempts the property of honorably discharged soldiers, sailors or marines, who served in the armed forces of the United States in any war in which the United States has been engaged. The amount of the exemption is $2,000. The second amendment has to do with the highway tax and provides that the legislation of the fifth legislature, which authorized the issue and sale of state highway bonds to aid in the construction of state highways, shall take effect without being submitted to the electors of the state. It is further provided that the total amount of such bonds shall not exceed $2,000,000.

Constitutional Amendments on Taxation to be Voted upon 1922

Arizona proposes a limitation of the state debt which shall not exceed four per cent of the assessed valuation of the taxable property in the state, and further requires that all bond issues or special assessments shall be submitted to the vote of real property taxpayers.

Arkansas desires to change the present constitutional limitation of a two-mills annual tax for school purposes by providing that

the legislature may fix the limits of such a tax by law. The amendment further proposes to remove the limitation placed upon the local electors in the raising of an additional tax for school purposes which is now five mills by providing that the electors may vote such an amount of tax as may be necessary for the building and maintenance of local schools. Any excessive tax raised for such purposes may be reduced by the quorum court of the county. A further provision would remove the present poll tax of one dollar and give the general assembly power to lay an annual per capita tax of a different amount on every inhabitant who has reached the age of twenty-one years.

In an entirely new amendment to the constitution Arkansas would provide that all personal property located within an improvement district shall be subject to assessment and taxation for paying the cost of such improvement and all bonded indebtedness. The county court and the municipal council determine the rate to be levied for their respective improvement districts, but it is provided that not more than ten per cent of the assessed value of the personal property may be collected for any one such district during one year. The county court or the municipal council may provide for the proportionate deduction of the tax on the real estate in such improvement district, not to exceed the amount levied on the personal property.

California will vote upon three amendments. One relates to the imposition of a tax in lieu of all other taxes and at a different rate upon all notes, debentures, shares of capital stock, bonds or mortgages not exempt from tax; a second amendment includes those released from active duty under honorable conditions in the class of veterans whose property to the value of $1,000 is exempt from taxation; the third amendment proposes a material increase in the rate of tax on public utilities and certain corporations.

Colorado would provide a four-year term, now two years, for all county officials. This amendment includes county assessors, and it is therefore important as a revenue measure as it will give county assessors four-year terms instead of the present unsatisfactory term of two years. This amendment is being strongly supported by the state tax commission of Colorado.

By an initiative petition Colorado proposes an income tax amendment to the state constitution. This amendment is as follows: "All laws exempting from taxation property other than that hereinbefore mentioned shall be void. Provided, however, that the general assembly shall, and the people, acting through the initiative power reserved by them in this constitution, may enact laws exempting from all taxation, except an income tax, money, notes, credits, bonds, book accounts, tax sale certificates, debentures, other written evidences of indebtedness, and all corporate stocks

except the capital stock of banking corporations, and at the same time enact laws imposing a uniform or a graduated tax on any or all incomes; and reasonable deductions and exemptions may be provided in such income tax laws."

Delaware, in an amendment relating to the capitation tax, would strike out the word "male" so as to provide that such a tax shall be laid upon every citizen of the state of the age of twenty-one years or upwards.

Illinois in its new constitution adopted in convention June 28, and to be submitted at a special election, December 12 of this year, proposes several amendments to the revenue section of its constitution. The most important change is that relating to the income tax. The new constitution states that the general assembly may provide for a uniform and substantial tax on the income derived from intangible property in lieu of any other tax on such property by valuation.

A personal income tax is also provided for in that the new constitution states that a general income tax may be imposed upon all net incomes. If such income tax, which the assembly may enact, is graded and progressive, the highest rate shall not exceed three times the lowest rate. The income tax is to be levied and collected by the state, and in the case of the tax upon net incomes, the revenue derived therefrom is to be apportioned to the state and the local taxing bodies as the general assembly may prescribe, and in the case of the revenue received from the tax on the incomes derived from intangible property it is provided that there shall be used for state purposes the same percentage as is used from the total revenues from taxes by valuation and the residue shall be returned to the respective counties from which collected to be distributed among the local taxing bodies.

The new constitution further states that if a general income tax is imposed the general assembly may provide for: (1) an exemption of all household furniture and implements of agriculture or labor used as such without limit as to amount; (2) an exemption from income derived from personal service of not to exceed $1,000 to the head of a family plus $200 for each dependent child under the age of sixteen years, and a further exemption of not to exceed $500 to any other person.

The new constitution of Illinois also would exempt from taxation certain classes of property and the income derived therefrom. Such property is as follows: public property; household furniture used as such up to $500 in value; parsonages owned and used as such; property used exclusively for agricultural and horticultural societies, not organized for pecuniary profit; incorporated societies of war veterans; cemeteries not held for private profit and property held for school, charitable or religious purposes.

Forest taxation is cared for by Illinois in a provision which states that areas devoted to forest or forest culture, may be classified for or exempted from taxation. The new constitution also retains some of the tax principles of the old constitution in that it is provided that taxes may be imposed on privileges, franchises, and occupations, uniform as to class, and the general assembly is authorized to levy taxes upon property by valuation so that every person or corporation shall pay a tax in proportion to the value of his or its property.

Michigan will vote upon an income tax amendment. It provides "for a tax of not to exceed four per cent upon net gains, profits and incomes from whatever source derived, which tax may be graded and progressive." Classification of proper persons, firms and corporations is permitted. The state tax commission opposed the limitation of the tax to four per cent and the insertion of the word "net" before "gains, profits and incomes".

Minnesota by an amendment seeks to provide for an annual occupation tax in addition to all other taxes on all ores mined by any person or corporation; 50% of the tax to go to the state, 40% to the permanent school fund and 10% to the permanent university fund.

Mississippi, by a concurrent resolution at its legislative session this year, inserted in the state constitution the amendment adopted by the people in 1920 relating to the laying of a poll tax of two dollars on each inhabitant of the state between the ages of 21 and 60 years. The amendment exempts deaf, dumb, and blind, and those maimed by loss of hand or foot, and provides further that the board of supervisors of any county may increase the poll tax to three dollars on each poll. The tax is to be used in aid of the common schools.

Montana proposes an amendment which provides for a state board of equalization with the powers and duties of a tax commission.

Ohio proposes two amendments both the result of initiative petitions. One deals with the section of the constitution providing for the taxation of property according to value, and, according to the citizens committee on taxation, introduces the following new propositions: (1) No aggregate tax rate in excess of fifteen mills on the dollar can be levied without a vote of the people; (2) No rate in excess of one mill can be levied for state purposes; (3) Additional taxes must be authorized as to specific amounts, periods and purposes at a regular November election by two-thirds of those voting on the proposition, unless a majority of those voting at the election approve; (4) The limited levies are to be distributed by local boards. If composed of persons holding other offices, these must contain representatives of the county government, the muni-

cipal governments and the schools; (5) The legislature is authorized to substitute other methods of taxation of property for the taxation thereof according to its value, but no property can be relieved of taxation according to value without such substitution. The second amendment is an entirely new provision and, in substance, provides that no indebtedness shall be incurred for current expenses nor for the acquisition of property having an estimated usefulness of less than five years with certain necessary exceptions of an emergency character. It is further provided that no funded debt shall run longer than forty years and no bonds or notes issued for property or improvements shall run any longer than the probable period of usefulness to be estimated and fixed as provided by law.

Oklahoma proposes to increase the rate of levy for all purposes in the state from 31.5 mills to 41.5 mills. The sole beneficiary is the local school district, which receives the added ten mills.

Oregon will vote upon a single tax measure proposed by initiative petition by the Oregon single tax league. This measure proposes that for four years beginning July 1, 1923 to and including July 1, 1927, all revenue necessary for the maintenance of state, county, municipal and district government shall be raised by the tax on the value of land irrespective of improvements in or on it, and thereafter the full rental value of land, irrespective of improvements, shall be taken in lieu of all other taxes for the maintenance of government and for such other purposes as the people may direct.

In addition to the foregoing the state taxpayers league proposes by means of the initiative an income tax measure which requires that one-half of the tax levied for state expenses shall be levied each year beginning with 1924 on the net incomes of natural persons and corporations. The annual rate of income tax to be fixed by dividing the amount of the tax required by the total net amount of all incomes subject to such tax. The exemptions provided in this measure are from $800 to $1,000 for unmarried persons; $1,000 to $1,500 for married persons and $200 for each dependent. Further exemptions are life insurance, gifts, bequests, devises and inheritances, and such corporations as are exempt by the federal income tax law.

The state grange of Oregon by means of the initiative proposes a further income tax amendment. This measure provides for a tax on the incomes of all residents and non-residents, the source of whose income is within the state and upon the net incomes of corporations, joint stock companies and associations not otherwise taxed. Natural persons are to pay on the net incomes of their business not otherwise taxed. The exemptions for the individual income are up to and including $1,500; for husband and wife.

$2,500; for each child under eighteen years, or person entirely dependent upon the taxpayer $400. The measure also exempts mutual savings, building and loan, religious and charitable associations. The rates are graded, paying 1% on amounts up to and including $10,000, when the rate is 5.5%. At $11,000 the rate is 7% and increases 1% up to $50,000, at which it is 15% on that and amounts in excess thereof.

Utah proposes to classify property to the end that the burden of taxation may be equitable upon all property, and the legislature is empowered to divide all property, including money and credits as well as physical property, into classes and to determine what class or classes of property shall be subject to taxation and what exempt. The legislature is further empowered to impose a tax upon incomes, which tax may be graded and progressive, and reasonable exemptions provided.

A second amendment in Utah proposes to increase the debt limit for state purposes not to exceed 2% of the value of the taxable property of the state. The present limit is 1.5%.

Special Tax Investigating Commissions

The Maryland legislature this year authorized the governor to appoint a tax revision commission of five persons, not more than three of whom shall be of the same political party, and to serve without pay. The commission is authorized to investigate thoroughly the systems of state, county and municipal taxation in force in the state, including direct and indirect taxation, licensing, taxes, valuations, assessments and collections, and all other matters pertaining to the subject of revenue and taxation. They shall also inquire into the revenue systems in force in other states and shall ascertain the operations and effects of such systems, and particularly how far the same are satisfactory to the people of such other states and how efficient such systems are in raising revenue. The commission is to prepare a draft of a bill and to make a report in printed form to the governor by December 1, 1923.

New York continues its special tax commission and gives it the additional power of examining the statutes relating to municipal corporations and political subdivisions of the state and of inquiring into their organization, administration and fiscal affairs, for the purpose of discovering methods which will tend to eliminate waste and extravagance, and lead to a more economic administration of municipal and local affairs. The commission is to make its final report March 1, 1923.

Pennsylvania also continues the work of its tax law revision commission which is authorized to revise, amend and consolidate the laws relative to the assessment, levy and collection of taxes for county, city, town, township, school and poor purposes, and make a report to the legislative session of 1923.

State Tax Administration

Kentucky gives the state tax commission power to increase or decrease the assessed valuation of the property of individuals and corporations. Provision is also made for notice and hearing, in which the county judge may take part, and in case the county judge is dissatisfied with the decision of the tax commission he, as well as the person or corporation taxed, may appeal from such decision.

New York amends the tax law in relation to reports made on corporations by the secretary of state to the state tax commission. Such officer is required to transmit to the state tax commission notice of all dissolutions, mergers, consolidations, increases and decreases of capital stock, changes of name, and reorganization of all domestic corporations and dissolutions, withdrawals and revocations and changes of designees of foreign corporations filed or reported in his office.

New York also amends the tax law concerning official visits by the state tax commission to the counties of the state. The clerk of the board of supervisors is required to send notice of such visit to each of the supervisors and assessors in the county ten days before the official meeting, and is further required to advise the state tax commission that such notices have been sent.

North Carolina enacts a new law authorizing the commissioner of revenue and his deputies in all matters concerning revenue and taxation to administer oaths.

Local Tax Administration

Alabama amends the section of the revenue code concerning tax collectors by providing that the tax collector and assessor in counties of more than 150,000 shall receive no fees in the collection of the school tax but shall be given the sum of $1,000 for their services in the assessment and collection of such taxes.

Massachusetts enacts a new law which requires assessors to make an annual report of the number of persons living within their respective limits who are liable to enrollment in the militia. A report of such persons is to be made to the town clerk for transmission later to the adjutant general of the state. A new measure also enacted by Massachusetts requires assessors to notify the financial officers of cities and towns of amounts to be raised by taxation for state, county and city or town purposes. The assessor is also required to notify the financial officers of municipalities of the amounts of abatement of taxes and whether such abatement is on account of assessments on property or on polls.

Exemptions from Taxation

Seven states amend their revenue laws relating to tax-exempt property.

Alabama amends the revenue act of 1919 by exempting concessions at any state or county fair or agricultural association from taxation when such concessions are on the premises owned or controlled by the fair associations.

Colorado, in the "declaration of principles" which accompanies certain initiative petitions submitting amendments to the Colorado state constitution, shows strong opposition to any further exemption from taxation of any class of property and further issuances of tax-exempt securities.

Maryland enacts a law exempting shares of homestead or building associations from taxation to the extent that such shares represent investments of certain classes of property. Such associations after January 1, 1923 if incorporated under the laws of Maryland shall not be required to file any statement or report with the state tax commission. The time for exempting property held by any hospital or asylum for future use and not for investment is extended two years from January 1, 1922 to January 1, 1924.

Massachusetts provides that real or personal estate held in trust for the benefit of incorporated organizations of veterans of any war in which the United States has been engaged shall be exempt. The adoption of this measure extends the exemption which formerly applied only to the real and personal estate belonging to such organizations. There is also exempt from taxation the personal property and buildings occupied or used by a benevolent or charitable institution which conducts an insane asylum or insane hospital. The state, however, taxes the fair cash value of the land owned by such institution and used for the purposes of an asylum.

Mississippi exempts from taxation hospitals maintaining one or more charity wards used for charity patients and which employs all its income for hospital purposes and not for profit. There is also enacted a new measure for the purpose of encouraging certain industries. Such industries are exempt from taxation on their tangible property used in or necessary to the operation of the industry for a period of five years. The products, however, are not exempt.

It is also provided by Mississippi that money on deposit in either national or state banks or trust companies shall be exempt from tax of any character. This state further amends the law relating to exemption of permanent new hotels from county and municipal taxation by extending the period within which such hotels may be constructed in order to obtain the exemption to January, 1924. The period of exemption is five years from February 1, following the date of the commencement of the work.

New Jersey exempts the land with improvements thereon used for public purposes and not exceeding five acres in extent, when

such land belongs to one municipality and extends into another by reason of the formation of a new county or in the annexation of territory from one county to another. It is also provided that charitable, benevolent and religious corporations or institutions not owning property shall in order to obtain the benefit of exemption from taxation, show an equitable control or ownership as to use, management, occupancy, sale and disposition, though the legal title may be in another person or corporation. Such institution must further show that such property is being used on the taxing date for purposes of a nature which are exempt from taxation.

New York amends the tax law relating to exemption of new buildings from local taxation by extending for one year the time within which the construction of new buildings may be commenced in order to entitle such property to the exemption. A further amendment permits the local legislative body of a county or city to grant exemptions which do not exceed the exemption authorized by the general law. The term "construction" is defined and deemed to have commenced when the building plans are filed with the proper authority and excavation actually and in good faith commenced. This state also amends the law relating to franchise tax on corporations by omitting certain obsolete provisions in the section exempting certain corporations from the tax on capital stock and by making more definite the fact that the corporations taxable under the corporation income tax law are not taxable under the franchise tax law.

Rhode Island enacts a new law, local in character, which authorizes the city of Newport to exempt from taxation for a period not to exceed ten years such hotel property as may hereafter be located in such city in consequence of such exemption. The land on which the building is located, so long as such property is used for hotel purposes, is also exempt.

Income Tax

Massachusetts amends the income tax law by exempting from such tax ships and vessels engaged in the interstate or foreign carrying trade. Such vessels already pay an excise tax which is assessed locally. This state also requires employers to file returns of employees who receive in excess of $2,000, formerly $1,800, a year. Such employers are required further, when the tax commissioner so requests, to state the exact wages, salary or other compensation received by the employee. Massachusetts also enacts a measure which provides that where the tax commissioner finds that the income of any person has not been assessed, he may assess the same with interest at six per cent.

New York amends the personal income tax law by defining the term "resident" to be any person domiciled in the state of New

York, or any other person who maintains a permanent place of abode within the state and spends in the aggregate more than seven months of the taxable year within the state. Relief is extended to persons who change their status from a resident to a non-resident or *vice versa*. Such person is required to file two returns, one covering the portion of the year he was resident and one covering the portion of the year he was non-resident. The exemptions which are allowed are to be divided rateably between the two returns.

The personal income tax law is further amended to provide that a trust, the distribution of the income from which is in the discrimination of the fiduciary, either as to the beneficiaries to whom payable, or as to the lands to which any beneficiary is entitled is taxable without deduction of any amount paid or credited to any such beneficiary. It is also provided that a trust created by an employer as a part of a stock bonus or profit-sharing plan for the exclusive benefit of his employees to which one or both contribute shall not be taxable, the employee to be taxable only on any amount distributed to him from such fund to the extent that the amount received exceeds the amounts paid in by him.

This state adds to the personal income tax law two new sections which relate to the exchange of property. It is provided that when property is exchanged for other property having a readily ascertainable market value, the property received in exchange shall for the purpose of determining gain or loss be treated as the equivalent of cash to the amount of its fair market value, if any, or if property received in exchange has a readily ascertainable market value, no gain or loss shall be recognized in the following cases: (1) when in a corporate reorganization, consolidation, or (2) when a person transfers any property to a corporation and because of such transfer is in control of such corporation by stock ownership acquired by the transfer of such property for stock of the corporation. When no gain or loss is realized in the exchange of property, the property received shall be treated as taking the place of the property exchanged. New York also amends the personal income tax law in the sections dealing with inventory and the time and place of filing returns by striking out in such sections references to the federal income tax law. The reason for this elimination is due to the frequent changes in the federal income tax law.

South Carolina in 1918 repealed her income tax law and in 1922 enacts a new one. This later law is based upon the federal law. South Carolina states that for the purpose of determining the amount of net income and for the purpose of fixing the amount of the income tax, all the provisions of an act of Congress of the United States of America, approved November 23, 1921, relating

to levy, assessment and collection of income tax and all the rules and regulations promulgated by the Department of Internal Revenue under such act are hereby adopted and enacted.

Inheritance Tax

Arizona at the special session remodeled its inheritance tax law, basing it, according to the state tax commission, upon the Wisconsin inheritance tax law. The percentage of rates in the Arizona law are, however, somewhat higher than in those of the Wisconsin act.

Louisiana, in special session September 1921, enacted a new inheritance tax law. The old law levied taxes on inheritances solely for the support of the public schools, the rate being two per centum on the value of the inheritance going to the immediate relative and five per centum on the amount to collateral heirs. The new law allows an exemption of $5,000 to direct descendants, $1,000 to a collateral heir and $500 to a stranger. Legacies and donations to charitable, religious or educational institutions located in the state are wholly exempt.

The rate of tax upon the value of the inheritance to a direct descendant is two per cent on amounts in excess of $5,000 up to $20,000 and three per cent on amounts in excess of $20,000; to a collateral heir five per cent on amounts in excess of $1,000 up to $20,000 and seven per cent on amounts in excess of $20,000; to a stranger five per cent on amounts in excess of $500 up to $5,000 and ten per cent on amounts in excess of $5,000.

Massachusetts amends its inheritance tax law relating to amounts taxable and the rates thereon as follows:

In class A, which consists of husband, wife, father, mother; child, adopted child, adoptive parent, grandchildren, the base or value is reduced from $1,000,000 to $500,000, but the rate of 5% remains the same; on excess above $500,000 and not over $750,000 the rate is increased from 5% to that of 5.5%; on excess above $750,000 and not over $1,000,000 the rate is increased from 5% to that of 6%; on excess above $1,000,000 the rate is increased from 6% to that of 7%, this latter being the maximum base and rate for class A.

In class B, which consists of lineal ancestor, except father or mother; lineal descendant, except child or grandchild; lineal descendant of adopted child, lineal ancestor of adoptive parent; wife or widow of a son; husband of a daughter, the base or value is reduced from $1,000,000 to $500,000, but the rate of 6% is unchanged; on excess above $500,000 and not over $750,000 the rate is increased from 6% to 7%; on excess above $750,000 and not over $1,000,000 the rate is increased from 7% to 9%, this latter being the maximum base and rate for class B.

In class C, which consists of brother, sister, half-brother, half-sister, nephew, niece, step-child or step-parent, the base or value is reduced from $1,000,000 to $500,000 and rate of 9% remains the same; on the excess above $500,000 and not over $750,000 the rate is increased from 9% to that of 10%; on the excess above $750,000 and not over $1,000,000 the rate is increased from 9% to that of 11%; on the excess above $1,000,000 the rate is increased from 10% to that of 12%, this latter being the maximum base and rate for class C.

In class D, which includes all others, the base and the rate is the same as in class C.

Mississippi gives the state more authority to compel a proper return both as to the value and the inventory of the taxable property of a decedent. Such legal action taken by the state to be valid must be instituted within six years from the death of the tax decedent.

New York establishes a new rule for determining the inheritance tax upon the estates of non-residents. The rule states that to fix the tax in the case of a transfer from a non-resident decedent determine (1) the fair market value of the aggregate transfer whether within or without the state, (2) the New York transfer and its fair market value, (3) the tax which would be imposed upon such aggregate transfer if taxed as a whole. The amount of the tax under the rule shall be such a part of what the tax would be upon the aggregate transfer as the New York transfer bears to the aggregate transfer, but without increasing the graded rate by the inclusion of property without the state and without taxing transfers of which the amount is not over $500.

This state makes taxable certificates of interest of corporations or of joint stock companies or associations including all dividends and rights to subscribe to the stock of such corporations. Property conveyed under a trust deed by the terms of which the donor may alter the amount or revoke the same, and property over which a non-resident donee exercises a power of appointment are made taxable under the inheritance law.

A new section is added by New York to its inheritance tax law. It provides for an optional commutation tax on non-resident estates based upon the value of the property taxable in the state, provided that it is proven to the satisfaction of the surrogate that the amount of the tax will not be decreased by the following method: the transfer on the estate of a non-resident decedent may be commuted and finally settled as between the state and all parties in interest by the payment to the state tax commission of the sum to be determined by such commission which shall in no case be less than two per centum upon the clear market value of all the property within the state and taxable under the inheritance tax law without deduction or exemption of any kind.

South Carolina enacts a new inheritance tax measure. For purposes of taxation "beneficial interests" are divided into three classes. Such interest passing to immediate relatives of the first class are exempt to the amount of $10,000, when passing to the husband or wife; $7,500 when passing to a minor child; $5,000 when passing to adult children and father and mother. On amounts in excess of the exemptions, the minimum rate is 1% and the maximum rate 6%, the latter being on all sums in excess of $300,000. The second class is allowed an exemption of $500. In each case the excess is taxed at the minimum rate of 2% and a maximum of 7%. This last being on all sums in excess of $300,000. The third class receives an exemption of $200 and the excess is taxed at a progressive rate, the minimum being 4% and the maximum 14%, the latter being on all sums in excess of $300,000. Such inheritance tax is payable to the state, the proceeds being for the use of the state and the law is administered by the state tax commission.

Public Utilities

New Jersey changes the date from March 1st to that of December 10th for the certification of the value of the real estate used for railroads or canals. The state board of taxation and assessments is required to certify such taxes to the county board of taxation and the date for the review of such taxes for the state board is changed from November to that of June.

North Carolina amends its law relative to the assessment of property and the collection of taxes of railroads by providing that railroads shall have the same right of appeal from any assessment, ruling, or order of the commissioner of revenue as is given other corporations.

North Carolina further amends its revenue law relating to privilege tax on railroads by declaring that it is the state's intention to levy such license or privilege tax only upon railroads for the privilege of engaging in intra-state commerce and not on the privilege of engaging in interstate commerce or upon the business of interstate commerce.

Miscellaneous Corporations

Kentucky provides for the taxation of shares of corporations organized under the cooperative marketing act. The shares are taxed against the owner and the property of such corporation which is represented in the shares is not taxed. It is further provided that so much of the value of each share of stock as may represent the owner's proportion of crops grown by him and delivered to the association shall be exempt from taxation.

Maryland by a new provision imposes a penalty on any corporation which fails to pay to the state any franchise tax, capital

stock tax, tax on assets and gross receipts. Tax due before November 1st of the year in which tax is imposed. The penalty is an additional amount of ten per cent, to be added to the tax due and unpaid. The attorney general is empowered to collect the tax, and failure to pay the added penalty is a forfeiture of the charter. This state also provides that the state tax commission shall ascertain the amount of capital employed in the state by each foreign corporation and certify the amount of such capital with the amount of franchise tax due to the comptroller of the treasury for purpose of collection. Such foreign corporations as default in the payment of the tax shall forfeit the right to do business in the state until all such taxes are paid.

The date is changed by Maryland for the payment of the franchise tax on corporations from September to May, and changes are also made in both the base and the rate on the capital stock. The new law is as follows: for each additional $2,000 or fractional part in excess of $50,000 up to and not greater than $100,000 the sum of $1.00; if the amount of such capital stock is more than $100,000, but not greater than $250,000, there shall be an additional annual franchise tax of $20; if capital stock is more than $250,000 and not greater than $500,000 there shall be an additional franchise tax of $20; if capital stock is more than $500,000 and not greater than $1,000,000 there shall be an additional franchise tax of $30; if capital stock is more than $1,000,000 and not greater than $10,000,000 there shall be an additional annual franchise tax at the rate of $50 for each additional million dollars or fractional part; and on every $5,000,000 in excess of $10,000,000 the additional annual franchise tax on such excess shall be at the rate of $100 for each $5,000,000 or fractional part.

The date for corporations to file their annual report with the state tax commission is changed by Maryland from March 1st to that of March 15th. This state also amends law relating to tax on gross receipts of certain corporations by taking guarantee and fidelity companies from the list of corporations subject to such tax.

Massachusetts also amends its corporation tax law by requiring a domestic corporation which is a subsidiary of or closely affiliated by stock ownership with a foreign corporation, and gives all payments made to such foreign corporation or its officers in excess of the fair value of the property or services given therefor, to pay as a minimum tax one-tenth of one per cent of such corporation's gross receipts. Formerly such tax was $20 per one thousand on the corporate excess, for the taxable year from business assignable to the commonwealth. This same minimum tax shall in like cases apply to foreign corporations carrying on or doing business in the commonwealth. It is also required that in the list of shareholders of the corporations their residence shall be given by city or town and state.

New York amends the law in relation to the organization tax on corporations by providing that such organization tax shall be five cents for each share authorized to be issued without par value.

This state also amends the law in relation to a franchise tax on certain corporations by defining the term "corporation" as used in this connection to include any business conducted by the trustee wherein interest or ownership is evidenced by the certificate or other written instrument. It is also provided that such corporations shall pay a minimum tax of not less than $10 nor less than 1 mill on each dollar of such a portion of the net value of this capital stock which net value shall be deemed to be not less than $5 a share. If dividends on the par value of any kind of capital stock amount to six or more than six per cent, the tax upon such kind of capital stock shall be at the rate of one-quarter of a mill for each 1 per centum of the dividends. The dividend rate for a corporation having stock without nominal or par value shall be determined by dividing the amount distributed as a dividend during the year by the net value of its assets as of December 31st. The report year for such corporations is changed from the year ending October 31st to the calendar year and time of payment of tax to March 15th. The law relating to license tax on foreign corporations is changed by defining such corporations to include a joint stock company or association, and any business conducted by a trustee or trustees wherein the interest or ownership is evidenced by a certificate or other written instrument. The powers of the New York state tax commission in the matter of the franchise tax on business corporations are increased by giving such commission authority to require the filing of a combined report when all the capital stock of two or more corporations is owned by the same interest. It is also required of a corporation which has been permitted by the tax commission to change the period for filing its report to include in the next report the corporation's entire net income not before used or included in measuring a franchise tax to the state, whether such income arose over a period of more or less than one year, and the corporation shall be taxed upon its entire net income as if earned within one year. Penalties for failure to make such report are to be assessed and collected in the same manner as the original tax. The tax commission is further given power, if the original tax was less than should have been exacted, to increase or make such other changes as may be necessary. Provision is also made for the credit or re-payment of any excess tax paid by any corporations and also for re-audit and filing of reports.

The law relating to taxation of bank shares is changed by New York by eliminating the provision that the assessment and taxation of such shares shall not be at the greater rate than is made or

assessed upon other moneyed capital in the hands of individual citizens of the state.

North Carolina eliminates the provisions in the law taxing banks which relate to the deduction of insolvent debts and investments in bonds of the state from the items of undivided profits and surplus, and, in lieu thereof, provides a deduction from the items of surplus and profits of not to exceed five per cent of bills receivable to cover bad or insolvent debts and a deduction of investment in bonds of the state, United States, federal farm loan bonds and joint stock land banks at the actual cost price of such bonds to the bank.

The section relating to building and loan associations is amended so as to provide that the annual privilege tax of ten cents shall be paid on the $100 paid into and held by such association on account of shares. Formerly the tax was 10 cents on each share. Insurance companies which pay a tax on their gross premium receipts shall be permitted to deduct net additions to the reserve fund, payments made to policy holders, and income taxes which have been paid.

South Carolina amends its law relating to the license tax on corporations by increasing such license fee from one-half mill to that of one mill on its paid-up capital stock and also increases the annual license fee from one-half mill to that of one mill on each dollar of the value of the property of such corporation. The penalty for failure to file the proper reports or pay the license fees is reduced from $500 to $50 and the additional penalty reduced from $100 to $10 a day.

Virginia amends the revenue law as to local taxation of bank stock, the effect of which is to reduce the local tax on bank stock from one dollar to eighty-five cents.

Forest Taxation

Massachusetts repeals the old law relating to the taxation of forests which was rather complex and voluminous, being twenty-seven sections in length, and enacts a new and much simpler law of six sections.

The new law provides that an owner of forest land valued for taxable purposes for land and growth at not more than $25 an acre and which does not contain more than twenty cords per acre on the average, but is so stocked with trees as to promise a minimum prospective yield per acre of 20,000 board feet for soft woods, or 8,000 board feet for hard wood, or a combination of the two, may make application to the town assessors to have such land listed as classified forest land. The assessors decide whether the property fulfils the requirements for classification and notify the owner of their decision, giving their valuation of the tract as

land alone. If owner accepts decision the assessors give him a certificate describing the land, which is recorded by the owner in the registry of deeds for the county. Each parcel of land so classified to be each year designated in the annual valuation list of the town as classified forest land.

The valuation and tax annually assessed upon land classified as forest land shall not include the value of forest trees growing thereon, and the standing growth on classified forest land shall not be taxed, but the owner shall pay a products tax of six per cent of the stumpage value upon all wood or timber cut therefrom, and one-tenth of such taxes collected by the town shall be paid to the state treasurer.

The owner of classified forest land may annually cut, free of tax, wood or timber from such land not to exceed $25 in stumpage value, such wood to be for his own use or that of his tenant, and the owner shall make a sworn statement annually before May 1st to assessors of amount of all wood and timber cut the preceding year. It is also provided that buildings on classified forest land shall be taxed as real estate with the land on which they stand, and such land shall be subject to special and betterment assessments.

When in the judgment of the assessors classified forest land contains on the average per acre 25,000 board feet for soft woods or 10,000 board feet for hard woods or a combination of the two, they shall notify the owner that two years from date of such notification the forest products tax of six per cent of the value of the standing timber based on the above volumes will be levied and that the land and timber will at that time be taken from the classified list and placed in the general property tax list. If the owner within two years reduces volume of timber below volume above noted, the land shall remain classified, but if at the end of five years from time of cutting, the growing stock on the tract does not meet the requirements of 2,000 feet of soft wood and 8,000 feet of hard wood the tract may be taken from classification by the assessors.

The owner may withdraw his land from classification any time by payment of land tax and forest products tax of six per cent on estimated value of standing timber. When in the judgment of assessors classified forest land becomes more valuable for other use than the production of trees, they may after 30 days' notice withdraw such land from classification, and the taxes due must be paid. The owner, however, may appeal from such withdrawal to tax commissioner, whose decision is final.

In case of dispute as to eligibility of land for classification or as to volume of wood or timber on such land either party may appeal to state forester, who shall examine such property, give a hearing to both parties, and his decision shall be final. The owner of classi-

fied forest land failing to comply with the requirements of the law is punishable by a fine of not less than $10 nor more than $500, and, in addition, the land may be withdrawn from classification.

Miscellaneous License Taxes

Kentucky requires shows, exhibitions and concerts where a fee is charged, and when not performing in a licensed hall, to pay a license fee of five dollars. Shows on county or state fair grounds and where proceeds used for benevolent purposes are exempt from payment of fee.

Louisiana in special session September, 1921 provided for a license tax of one cent per gallon on gasoline sold by dealers or distributors. Retailers are not required to pay the tax. The supervisor of public accounts administers the tax. The receipts from this tax are paid into the state highway fund. For any delinquency in payment of the tax the penalty is two per cent per month on the amount of tax due and ten per cent attorney's fees on both the tax and the penalties.

Louisiana in special session September, 1921 imposed an annual graded license tax upon all motor vehicles. Such license tax is based upon the actual horsepower of motor vehicles of the first class and upon the rated carrying capacity plus the actual horsepower rating of motor vehicles of the second and third class. The rate per horsepower for each class is sixty-eight cents with the addition of a graded rate per thousand pounds for freight-carrying vehicles, and a flat rate per passenger, for passenger-carrying vehicles, the rate increasing with the number of passengers carried. There is also an annual chauffeur's license of five dollars. The license on horse-drawn vehicles in commercial use, except log wagons, is twenty-five cents per one hundred pounds. All fees collected are paid into the general highway fund of the state.

Mississippi enacts a new law providing for an excise tax of one cent a gallon upon all gasoline sold by any distributor in the state Retail dealers are not required to pay the tax when paid by a distributor. The tax collected is apportioned, 40% to the state auditor and 60% to the county from which the tax is received. Both state and county tax to be used for highway construction. A penalty of 5% is added to the amount of the tax due for failure to pay.

South Carolina imposes a license tax of two cents a gallon on all gasoline sold or distributed by oil companies doing a domestic or intra-state business. Oil companies are required to file monthly reports with the state tax commission showing the number of gallons of gasoline sold or distributed in the state. The tax is not to be imposed upon any selling agent, consumer or retailer who purchases from oil companies which have paid the tax. The state assesses one-half of the tax collected for the general fund, the

remaining half being distributed to counties for the construction or maintenance of roads. Companies failing to make the report required have an additional amount of ten per cent added to the amount assessed as a penalty.

New York takes over the licensing of billiard and pocket billiard rooms, and no such billiard rooms conducted as a public place of business for profit shall be permitted in any town, village or city of the state, unless such business has a license issued by the state tax commission. The amount of the license is five dollars for each billiard or pocket billiard table, and such license shall be taken out annually. One-half of the license fees shall be paid into the state treasury and one-half shall be remitted by the state tax commission to the chief fiscal officer of the town, village or city in which the business is carried on.

Poll Tax

Georgia amends the general tax law so as to exempt women from the payment of a poll tax in certain cases.

Massachusetts provides that any of its inhabitants, who were engaged in the military or naval service of the United States during the world war and who are still in such service or who can exhibit to the board of assessors an honorable discharge, may receive an abatement of the poll tax.

Mississippi amends its poll tax law in order to have it conform to the constitutional provision by eliminating students and teachers, members of the national guard and sea-faring men. These classes, formerly exempt, thus become subject to a poll tax.

Rhode Island by an amendment to its poll tax law extends the principle of the poll tax to every person, male or female of the age of twenty-one years or over who has had a residence within the taxing jurisdiction for six months next preceding June 15th, annually, and whose other taxes do not amount to one dollar.

Assessments and Taxes

Georgia provides for the election of a maximum tax of five mills for school purposes. This measure is in harmony with the constitutional amendment.

Louisiana in special session September, 1921 made provision for the collection of taxes on movable property which may be moved from one parish or municipal corporation to another. Duty of tax collector in whose district property was last located to collect the tax.

Louisiana in regular session this year, enacted two measures relating to rate of tax. One measure provides for the levy of a tax for state purposes at the rate of five and one-half mills on the dollar of assessed value of all taxable property in the state. There

is also imposed an additional tax for state purposes of twenty-five mills on the dollar of the assessed value on the rolling stock of non-resident firms, partnerships, corporations and associations having no domicile in the state and operated over any railroad in the state within or during any year for which such tax is levied. Assessment of such property is to be made by the state tax commission. The second law authorizes a municipal corporation to levy taxes for all local purposes at not to exceed seven mills on the dollar of assessed valuation. Municipalities which are exempt from parish taxes by law or by charter or which maintain their own public schools may levy not to exceed ten mills. Such levies are in excess of the levies made in pursuance of special elections.

Massachusetts enacts a measure which provides for the taxation of structures erected on land in state forests by persons occupying such land under authority conferred by the commissioner of conservation. This state also requires that the lands and buildings owned by the city of Boston, when listed for business purposes, may be taxed and the taxes assessed to the lessee or their assignees. Payment of such taxes shall be enforced by the sale of the interests of lessees or their assigns.

Massachusetts also provides that taxes uncollected after three years may be abated upon the written authorization of the tax commissioner to the assessors. Application for abatement of illegally assessed taxes shall be made within two years after the date of the bill for such taxes, and the state may postpone repayment of such taxes or repay by installments in order to equalize the burden of repayment.

Massachusetts amends its inheritance tax law by providing that the state treasurer may include bonds of the Commonwealth of Massachusetts or of the United States as security for the payment of certain taxes by fiduciaries and others. The income, inheritance, and corporation tax laws are amended so as to provide that any of such taxes which are unpaid and uncollectible may be abated by the board of appeal on the recommendation of the attorney general and the tax commissioner at any time after the expiration of five years from the date when the same became payable.

Mississippi increases its privilege taxes on the manufacturers of soft drinks, brokers and stock salesmen, amusement parks, six-wheel log wagons and warehouses; and also amends the law relating to privilege taxes on motor vehicles which provide that one-half of such taxes shall be paid to the state and one-half to the county for the use of the highways. Formerly all such taxes were paid to the state.

New Jersey, in a new measure, provides for a rebate in taxation to any taxing district in any county of the first class in which is located any state or county institution occupying 200 acres or more

of land. The amount of the rebate shall be equal to one-half of the county tax rate applied to the entire amount of rateables remaining subject to taxation. The county board of taxation shall prescribe the rule as to how such rebates shall be paid or credited to the collector of such taxing district by the county collector and how a proportionate part of such rebate shall be returned or credited to each taxpayer.

A new law is enacted by New Jersey which makes provision for the preservation of sheep, lambs, domestic animals and poultry by laying an annual tax of one dollar on one dog above the age of six months, kept by any person, and two dollars on each additional dog. In addition to this tax there may be annually levied, when legally ordered, a further dog tax to be assessed and collected as other annual taxes. Local assessors are required when making the annual assessment to list the number of dogs owned or harbored. The law applies to all the taxing districts of the state except those which, by municipal ordinance, regulate the running at large of dogs. The tax collected is to be apportioned in the annual budget in the local taxing district to care for losses caused by dogs to all domestic animals except cats.

New Jersey makes provision for municipalities in which taxes on second class railroad property were levied at the tax rate used for the 1919 assessment instead of 1920, and which because of that fact suffered a deficit in the municipal revenues. Such municipalities may by proper ordinance provide for a bond issue to care for such deficit. The same procedure is authorized where any municipality failed to levy and collect taxes for the year 1920 on property belonging to the government of the United States bordering on navigable waters.

New York amends the income tax law relating to distribution of such tax by providing that the town board may direct the town supervisor to retain all income tax moneys allotted to the town to be credited to general town purposes. In which case the one-third of total income tax moneys allotted to the town shall not be distributed to the school districts.

The general tax law in relation to notice of grievance days to non-residents is amended by New York so as to require that such notice shall include the time and place at which the board of assessors will meet for the purpose of hearing complaints in relation thereto. New York also amends the stock transfer tax law by requiring such a tax upon certificates of rights to stock or certificates of deposit representing certificates taxable under the law or certificates of interest in business conducted by a trustee. A further provision requires the attorney general, at the instance of the tax commission, to enforce action for the recovery of such tax with penalties. It is also provided that the civil practice act rela-

tive to statute of limitations shall not apply to any proceedings for the collection of the tax.

North Carolina enacts a new law which provides for the repayment of taxes illegally collected in excess of the amount due and paid into the state treasury. A demand for the correction of any error in the payment of taxes shall be made within two years from time paid. Law is made retroactive covering a period of five years.

Rhode Island amends its revenue law by changing the fiscal year from the calendar year to the year ending November 30, and also changes the date for the collection of the state tax to April and October, formerly June and December. Provision is also made for the levy of a tax in addition to other state taxes of three cents on each $100 of assessed valuation, such tax to be used for highway purposes.

Virginia makes a substantial reduction in the tax rate upon bonds, notes and other evidences of debt from eighty cents state rate to thirty-five cents state rate; and from thirty cents local rate to twenty cents local rate; and at the same time takes away the right of deduction of debts upon the assessed value of this class of property.

DELEGATE FROM NEW YORK: In relation to the exemption of buildings in New York, it might be well to say that it is not "buildings", but "buildings for dwelling purposes". That point has been raised by some of the auditors here. It means only building for dwelling purposes. I anticipate he said that. It has been misunderstood and I wanted to call your attention to it.

CHAIRMAN NOLAN: There are no further duties for the chairman of the conference, so I turn the meeting over to the permanent chairman.

CHAIRMAN LORD: I want to announce at this time the apointment of Mr. Douglas Sutherland of Illinois as chairman of the committee on resolutions, and to remind you again that each state, province and the District of Columbia is entitled to one member each on that committee, and it will be up to each state to make its selection and report to the chairman of that committee, Mr. Sutherland. I hope you will do this as soon as possible, because that committee has a good deal of work to do, and it will be necessary for them to begin their labors in a very short time.

The secretary spoke of the luncheon to which the ladies are invited at the New England furniture store tomorrow noon. I want to assure them that I know something about the hospitality of the owner of the New England furniture company, and I know it will be a real treat, and I hope the ladies will all accept the invitation.

I know Mr. Harris will be delighted to have you come, and you will receive the most cordial welcome and everything that goes with it.

The other committees that are provided for in the rules I will announce in the morning. We will convene tomorrow morning in accordance with our custom, at 9:30. Let us make it 9:30 sharp. Immediately after adjournment tonight, which is near at hand, I should like to have the members of the executive committee of the national tax association, who are present, come forward for a short session. I think with these announcements, we may announce the adjournment of the conference until tomorrow morning at 9:30.

(Adjournment)

SECOND SESSION

Tuesday Morning, September 19, 1922

Chairman Lord: The conference will please be in order. It is somewhat past the hour that was announced last night, and we must proceed rapidly if we are going to get through with our program this morning. The secretary wishes to make one or two announcements, and I think they might well be made at this time.

Secretary Holcomb: The committee on local arrangements has very kindly made out some envelopes addressed to those persons who had sent in their names to the hotel, and those envelopes contain three cards, in most cases. They have very kindly extended the privileges of the Minneapolis Club to all members present, not from Minnesota. Another card is the Interlachen Country Club, and then this card giving the Washburn Crosby Company's mills trip. Those cards are at the desk, and it would be desirable for those who have not received these cards to apply for them.

Our usual photograph, which is quite an important matter and somewhat difficult to arrange, will be taken at the close of this session, 12:30, at the Third Avenue entrance. It is a matter of considerable difficulty to arrange this unless every one co-operates readily and promptly, so if you will try to help and bring this matter off promptly it will be a great advantage.

The members of the committee on resolutions should be handed in, and perhaps it would be just as well, if you cannot find the chairman, to hand in the names to me. I have the names of eight or ten states already, but those states that have not indicated their selection ought to do so very promptly, and perhaps we can find the time, Mr. Chairman, to call the roll.

Chairman Lord: If the names are not handed in before the opening of the afternoon session, we will call the roll at that time.

Edward P. Doyle of New York: Mr. Chairman, before you proceed to the speeches and formal things, I should like to know when I may offer a resolution.

Chairman Lord: You may offer it now and the resolution will be referred to the committee on resolutions without debate.

(The resolution was thereupon read by Mr. Doyle)

CHAIRMAN LORD: The resolution will be referred to the resolutions committee. Since I made the appointment of Mr. Douglas Sutherland as chairman of the committee on resolutions, he has informed me that he is not attending as a delegate, and it will therefore be impossible for him to serve as chairman of the committee; therefore, much to my regret, it has become necessary to make a change and I have decided to appoint Mr. Harry P. Sneed of Louisiana as chairman of that committee.

Now, I want to supplement the request made by the secretary, that the different states canvass the matter at once and select their member of the committee on resolutions and hand the names either to Mr. Sneed or to the secretary, Mr. Holcomb. Either will be all right.

I have selected the following gentlemen to serve as a committee on nominations:

Professor C. J. Bullock, of Harvard University,
Hon. Nils P. Haugen, of Montana and Wisconsin,
Mr. F. N. Whitney, of New York,
Mr. C. P. Link, of Colorado, and
Mr. W. G. Query, of South Carolina.

In compliance with the rules, I appoint the following committee on credentials: Mr. W. S. Linton of Michigan, Mr. William Bailey of Utah, Mr. Alexander Holmes of Massachusetts, Mr. J. Enos Ray of Maryland, and Mr. G. C. Hanna of New Mexico. I think those are all of the committees that under the rules we need to appoint.

I have here a resolution handed in by Captain White relating to tax-exempt securities. I think we are all familiar with what that means and it will not be necessary at this time to read it. It will be referred to the committee on resolutions for their consideration. Are there any other resolutions?

MR. S. S. KALISHER of Pennsylvania: I have a resolution I wish to read that is very short. I might say in presenting this resolution, that while we are concerned with the assessing of properties and ways and means of collecting taxes, the matter of raising money to pay a tax sometimes confronts a taxpayer, and I have in mind the federal act of 1921, which has to do with the carrying forward of losses against the income of the next succeeding year or the second succeeding year, with respect to state income taxes or state franchise taxes based on income.

(Resolution read by Mr. Kalisher)

CHAIRMAN LORD: The resolution will be received and referred under the rules.

It is my pleasure to call to the chair to preside this morning

Judge Leser of Maryland. He needs no introduction to most of you, but to those of you who are attending a tax conference for the first time I might say that the Judge is probably the dean among the tax commissioners in this country; one of the ablest men connected with the service in the United States. I have pleasure in introducing Judge Leser of Maryland.

Judge Oscar Leser, of Maryland, presiding.

Chairman Leser: It is rather a dangerous thing to put me over the Lord, or even to make me a substitute for the Lord! I was thinking last night as we were talking about the rivalry between the two cities, that at least even if Minneapolis is the largest city in the state we ought to have some sense of modesty when we consider that St. Paul only is mentioned in the Bible.

Now, it is not part of the function of the presiding officer, much less a temporary presiding officer, to bore the audience. The committee on arrangements has provided that that will be done by other speakers; so we will start the procession by hearing from our good friend Judge Armson of the Minnesota commission on the subject of tax limitations and other current tax problems, with especial reference to Minnesota—Judge Armson.

Judge J. G. Armson, of the Minnesota tax commission: Mr. Chairman and gentlemen, as preliminary to the paper I am going to read, perhaps I should explain that I am not going to adhere very closely to the subject assigned me. I am going to address myself more particularly to the tax problems and tax burdens of Minnesota. In other words, I am going to present propaganda for consumption of the people of Minnesota. I endeavored at the outset, at least my original purpose was, to analyze tax limitations, in the various western states more particularly, and I began corresponding with tax commissions and tax officials of other states, asking them about their tax limits and debt limits, and they very kindly responded with information, but usually they sent me a copy of their laws governing tax limits and debt limits, but you know life is too short to study the laws of every state and find out what the tax limits are of other states, and frankly, it would not be easy for me today to tell you what our tax limits are in Minnesota. I want to explain that a little later; and I didn't feel that I would try to state the laws of other states and to summarize them in a digest to present to you this morning, so I am going to deal principally with the Minnesota situation. In order to keep reasonably within the twenty-minute limit referred to last evening, you will excuse me if I read rapidly here and there, because I am afraid that unless I do I shall exceed the limit placed upon papers.

TAX LIMITATIONS AND OTHER CURRENT TAX PROBLEMS WITH ESPECIAL REFERENCE TO MINNESOTA

J. G. ARMSON
Member Minnesota Tax Commission

No subject has been more frequently discussed at the conference of the national tax association than that of tax limitations. It has been one of the interesting topics at each recurring conference, and while the discussions disclosed a wide difference of opinion as to how far tax limitations should go, as well as to the best method of applying them, the preponderance of sentiment has been decidedly in favor of some limitation on the power of the different governmental units to levy taxes. Unfortunately nothing of a constructive nature has been developed by these discussions, due perhaps in part to the difficulty of finding a common basis of limitations that would fit into the widely divergent governmental units of the different states, and in part to the varying industrial, social, and economic conditions prevailing in the different commonwealths of the nation.

It is not my intention to enter into any extended discussion of the abstract principle of tax limitations. Originally I was opposed to any restriction on the right of a municipality to levy a tax for any public purpose in such amount as it might determine. I felt that tax restrictions had no place in a democracy; that the right to tax was inherent in the people, and that any abridgment of such right savored of autocracy.

Theoretically, perhaps I was right, but unfortunately, theory and practice do not always go hand in hand. In theory, the people levy the taxes and should pay them cheerfully, whether the rates are high or low. But in practice, the levy is made by a comparative few, the majority giving but little heed to the amount until confronted with a demand for payment. Then the majority awake to the painful fact that they slept while the comparative few were active in imposing burdensome levies for some things of doubtful utility or not urgently needed by the community. The protest is loud and emphatic for a short time, but it quickly subsides, and then gentle slumber again overtakes the majority, to be rudely awakened at the end of another year with a demand for still more taxes.

After more than a dozen years' experience in tax administration I am forced to the reluctant conclusion that my original pet theory that the people themselves levy the taxes is a beautiful fiction. They pay the taxes, but the interested few levy them. The fault is not with the few, but with the many, for it is almost the universal experience of tax administrators that the majority of taxpayers give but little attention to the thing that makes taxes neces-

sary—public expenditures. If a majority of the people who pay the cost of governmental activities could be aroused to the importance of a careful scrutiny of the amount and purpose of public expenditures, they would not need a guardian in the form of either constitutional or statutory tax limits.

As expressed by the courts, the power of the legislature, unrestrained by constitutional limitations, is absolute in the imposition and apportionment of taxes. In the state, the power to tax is not a statutory right, but an incident of sovereignty.

Most state constitutions contain some restrictive provision on the power of the legislature over taxation. Nearly all of the state constitutions provide that taxes shall be uniform, either on all property or on the same class of subjects, and that they shall be levied for public purposes only. In a few states there are constitutional limitations on either the rate or amount of taxes that may be imposed in any year.

The constitution of Minnesota contains no restrictive provisions on the amount of taxes that may be raised by the state, except that they shall be levied and collected for public purposes. It also provides that they shall be uniform on the same class of subjects. There is a conditional restriction on the power of the legislature over the taxation of railroads, the constitution providing that any law changing either the method or rate shall be submitted to a vote of the people for ratification before taking effect.

The power to levy taxes is not inherent in a municipality, but is delegated to it by the legislature. As expressed by the highest court of our own state in the case of *State ex rel.* v. *City of Ely*, 129 Minn. 140, "The state, by virtue of its sovereignty, has an inherent power to tax, limited only by the restrictions imposed by the constitution, but municipal corporations have no such inherent power, and can tax only in the manner and to the extent authorized by law."

Most of the states restrict municipal taxation to a maximum number of mills that may be levied, either in total or for specified objects, although a few base the limitation on the percentage of increase over the previous year or some specified year. As a supplement to tax limitations, nearly all of the states impose a limitation on the amount of public indebtedness that may be incurred by a municipality.

In Minnesota four different official bodies exercise separate powers in determining the amount of taxes to be raised each year for county and local purposes, the county, the town, the city or village, and the school district. There are certain statutory limitations, however, on the tax levies of the counties and municipalities of the state. Minnesota early in its history conceived it to be in the interest of sound public policy to place a limitation on the

amount of taxes that might be imposed on property by the local subdivisions of the state, the first restrictive laws being enacted in 1860.

From the enactment of our first law on the subject, now more than sixty years ago, and up to about a year ago, limitations on the taxing powers of the subdivisions of the state were based on certain maximum millage levies that might be imposed on property for certain specified purposes. In the earlier years of our history as a state, and up to a comparatively recent time, the principle of a millage limitation on tax levies proved to be a reasonably effective and equitable method of curbing extravagant expenditures of public revenues. The original maximum rates were sufficiently high at that time to permit of the carrying out of needed public improvements and the efficient administration of public affairs.

In later years, however, because of the expanding functions of government, the maximum rates were found to be too restrictive in many of the subdivisions of the state to permit of the carrying out of public improvements demanded by the people, so the policy of expanding the limitations to meet local conditions was inaugurated. That such expansion was necessary in many cases will not be denied. On the other hand, the policy of expansion has been permitted to run riot in many cases, until today there is but slight check on the power of municipalities to levy taxes in such amounts as may be determined locally. Since the original tax limitation law was adopted, more than two hundred amendments have been enacted into law, most of which, either directly or indirectly, permit of higher levies, and in a few cases, entirely remove all restrictions on levies. Today it would be difficult for the proverbial Philadelphia lawyer to accurately define tax limitations in Minnesota because of our conglomeration of limitation laws.

Under the general laws of the state, counties are limited to a maximum rate of five mills for county expenses, and ten mills for roads and bridges.

Township levies are made by the voters at the annual town meeting, subject to a maximum rate of two mills for general town expenses, fifteen mills for roads and bridges, one mill for dragging roads, and five mills for support of the poor. In case of emergency, the town board may levy an additional five mills for roads and bridges.

The maximum village rate is fixed at twenty mills, exclusive of certain special levies. The maximum per capita levy in villages, however, cannot exceed one hundred dollars.

There is no statutory millage limitation on tax levies in cities, but there is a per capita limitation of one hundred dollars. The charters of practically all of the cities, however, limit the amount of taxes that may be levied in any year, as well as the amount of bonded indebtedness.

Common school districts may levy up to thirty mills for the support of schools, and ten mills for new sites or buildings, while in independent school districts there are no limitations on levies for the support of schools, but the levy for new buildings is limited to eight mills. If the school district is located in a city or village, the maximum school levies cannot exceed a per capita of sixty dollars.

The foregoing limitations do not include levies for indebtedness, or interest on indebtedness.

Bonded indebtedness is limited to an amount not exceeding fifteen per cent of the assessed value of the taxable real property of the municipality.

The general statutory limitations on tax levies and public indebtedness, however, have been greatly expanded by numerous laws applicable to a class of municipalities.

From the time of the adoption of the state constitution in 1857, and up to 1892, the legislature of Minnesota was not prohibited from enacting special laws, that is, laws applying to a single county or municipality. Under the exercise of this power, when a municipality wanted to increase its tax levies beyond the maximum fixed by existing general or special laws, resort was had to the legislature for authority to make the increase, and, as the bill applied only to the municipality asking for the increase, but little opposition to its passage was encountered. This practice not only covered taxation, but many other matters of municipal government as well.

The policy of special legislation became so general that the greater part of each legislative session was occupied in the consideration of purely local bills, to the exclusion of measures of state-wide interest. So rampant did the policy of special legislation become that it grew to be a vice, and in 1892 the constitution was amended prohibiting the enactment of a special law in all cases where a general law could be made applicable.

The adoption of the amendment was hailed as marking the end of special legislation, often of doubtful wisdom, and not infrequently, vicious in effect, because enacted at the behest of special interests or factions. But our joy was shortlived. A way was soon found to circumvent the restrictive provision of the state constitution. It was discovered that the legislature could enact laws, general in their character but applicable only to counties or municipalities of a specified class, so the policy of class legislation has taken the place of special legislation, and the evil of the former is almost as vicious as the evil of the latter.

Our earlier laws applicable to municipalities of a specified class had the virtue of being based on some well-recognized difference in population or economic conditions, but in more recent years

almost any fantastic classification, if it does not embrace too much territory, can muster votes enough in the legislature to be enacted into law.

Laws are now passed that are applicable only to counties or cities having a certain population, with full knowledge on the part of the legislature that such laws will affect only one county or one city in the state. Likewise laws are passed applicable to counties having an assessed value in excess of a specified amount when there is but one county in the state with the specified valuation. Sometimes the representatives of two or three counties will get their heads together and devise a classification based on not less and not more than a specified taxable value. Sometimes a combination of assessed value and population is used, and if this takes in too much territory, area or the number of congregational townships in a county is added to the combination to overcome possible opposition. So ingenious have we grown in the art of classification that, in the refinement of its application, it has become almost a fixed science with us.

Many of these laws, perhaps most of them, are commendable. They are frequently designed to meet conditions which are peculiar to a few districts and which cannot well be met by a law state-wide in its application. The evil is not so much in the principle of classifying municipalities, as in the too flexible application of the principle. A reasonably flexible constitution, wisely construed, is preferable to a rigid and unyielding one, especially in this age of rapidly changing social and economic conditions. And yet the general policy of classifying municipalities, when too broadly applied, is open to the same abuses that grew up under the legislative power to enact special laws.

Many of these laws, that is, laws applicable to a class of municipalities, relate to tax and debt limits. Almost invariably they permit of an increase in the maximum tax levy, or in the amount of public indebtedness that may be incurred by municipalities, thus either directly or indirectly adding to the tax burden of the districts falling within the classification. Perhaps this would not be objectionable if such laws were in response to a general public demand on the part of a majority of the taxpayers of a district; but too frequently such laws are the result of the persistent activity of a few people, more or less directly interested in their passage, and the general taxpayer knows but little of them until he calls for his tax statement, then, too late, he awakes to find that he has been sleeping at the switch. Eternal vigilance on the part of the people is the price of moderate taxation, as it is of liberty.

As already pointed out, we have numerous statutory limitations on the power of Minnesota municipalities to levy taxes or to incur indebtedness. That such limitations have tended to check exces-

sive expenditures in some districts of the state is probably true, but in a great many instances, because of the numerous exceptions and loopholes, they have utterly failed to check excessive expenditures or to halt mounting tax rates.

While this failure is due in part to the ease with which tax and debt limits may be extended through the legislative power to classify municipalities, it is far from being the sole cause of growing public expenditures.

Many other causes have contributed to the rapid increase in the burden of taxation in recent years. The great war struggle in which our country was recently engaged, with its immense expenditures, had both a direct and indirect bearing on the burden of state and local taxation. Taxes are largely spent in the purchase of service and commodities; consequently any substantial increase in the cost of service or in the cost of commodities means a corresponding increase in taxes. The immense increase in the cost of labor and commodities, due to conditions resulting from the war, was almost immediately reflected in an increase in tax rates to meet the changed economic conditions of the country, thus directly adding to the burden of state and local taxation. Indirectly the burden was further augmented by the immense increase in federal taxes. The necessity for increased revenues to meet the stress of the war not only compelled the federal government to increase the tax rates on most of the taxable objects theretofore constituting the main source of federal revenues, but also compelled it to reach out for new sources of revenue to meet, in some part, the extraordinary demands on the public treasury, so federal taxes were extended to include inheritances, profits, sales, and numerous other imposts, thus greatly adding to the burden of the federal tax. Using ordinary receipts as the measure of the burden, we find that in the entire country the per capita of the federal tax burden in 1916 was $7.62, and in 1921 $52.05, an increase of 583 per cent in the five-year period.

In our own state the increase in the federal tax burden during the war period can be measured in part by a comparison of internal revenue collections in 1916 with 1921. For the fiscal year 1916 the total internal revenue collections in Minnesota amounted to $9,548,382, representing a per capita federal tax burden of $4.22; in 1921 the collections amounted to $77,722,157, a per capita of $31.55, being an increase of 714 per cent in the five year period. This immense increase in federal taxes has had an indirect, but none the less important, bearing on the increase in state and local taxation.

Another cause of growing tax burdens is found in the expansion of governmental functions in recent years. There is an ever increasing tendency to transfer the cost of many activities of a semi-

private character from the single individual to the collective individual called government. Not only is this tendency noticeable in state activities, but equally so in many of the activities of the smaller units of government. The state and its subdivisions are now doing many things for the benefit and welfare of the people that were formerly left to the individual to do for himself. This expansion of governmental functions means increased public expenditures, and increased public expenditures mean increased taxes.

Still another cause of increasing taxes is that not only do people demand more things from the governmental organization, but they demand better things than formerly—better public service, better educational facilities, better public buildings, better health and sanitation regulations, better roads, and better everything that governments are expected to do, just as the individual demands and enjoys better things than he did twenty years ago. A state is but an aggregation of individuals, and in the final analysis, the desires and wishes of a majority of its people are reflected in its government and in its institutions. A state, so far as its government is concerned, is what its citizens make it. They circumscribe its activities and define its policies, and in the exercise of these inherent rights, determine whether its taxes will be high or low.

But regardless of the cause of growing tax rates or the responsibility for the increase in tax burdens, the fact remains that during the past twenty years taxes in Minnesota, as in practically every other state, have increased much more rapidly than population, and more rapidly than wealth, if wealth be measured by the value of property listed for taxation.

As indicating the growth in the burden of state and local taxes in the last ten years, let me cite just a few comparative figures.

In 1911 the estimated full value of taxable real and personal property in the state, exclusive of the property of railroads and other public service corporations subject to gross earnings taxes, amounted to $3,847,223,000, representing a per capita in taxable wealth of $1,872. Ten years later, in 1921, the taxable wealth of the state, based on values determined by assessing officials, had grown to $6,037,558,000, representing a per capita value of $2,530, being an increase of fifty-seven per cent in the total and thirty-five per cent in the per capita of taxable wealth during the ten-year period.

In 1911 the total of all tax levies—state and local—amounted to $33,747,590, representing a per capita tax of $14.97; in 1921 the levies amounted to $108,019,673, a per capita of $45.26. The increase in the ten-year period was two hundred and twenty per cent in amount of taxes and two hundred per cent in the per capita of the tax burden.

The increase in the property burden of the tax, however, was

not so great as in the per capita of the burden. In 1911 the levy per $1,000 of full value amounted to $8.80, and in 1921 to $17.70, an increase of approximately one hundred per cent in the ten-year period.

Expressed in percentages, the increases in the last ten years were as follows:

In amount of taxable wealth	57	per cent
In per capita of taxable wealth	35	"
In total taxes levied	220	"
In per capita of taxes levied	200	"
In tax burden on property	100	"
In population	15	"

These figures show quite conclusively, as already stated, that during the past ten years taxes have grown much more rapidly than either population or wealth.

The foregoing comparisons are based on the full value of the taxable property of the state and measure the actual tax burden more accurately than if the comparisons were applied to taxable values, because, under our classified assessment law, the latter represent varying percentages of full value. However, if the tax burden be measured by taxable values rather than full values, we get but slightly different results.

Excluding money and credits from the computation, because taxable at a flat rate of three mills, we find that in 1911 the total taxable value of property subject to the general ad valorem tax amounted to $1,212,567,000, with an average tax rate in that year of $27.86 on each $1,000 of taxable value; in 1921 taxable values had increased to $2,026,793,000, and average tax rates to $52.67, the increase in the tax burden on each $1,000 of taxable value being eighty-nine per cent in the ten-year period.

This somewhat startling increase in the tax burden in the last ten years is due in large part to causes already referred to—the expanding functions of government in recent years, the insistent demand for better educational facilities, better roads and better public service generally, and in no small part to the war, with the resulting increase in the cost of the two items that represent such a large part of the public expenses, labor and commodities. That the influences of the war largely contributed to the increase in the tax burden is shown by dividing the last ten-year period into two five-year periods. In 1911 as already stated, the tax burden amounted to $27.86 on each $1,000 of taxable value; in 1916 it was $33.19, and in 1921 $52.67. Thus the increase in the first half of the ten-year period was nineteen and thirteen one-hundredths per cent, while in the second half, the war period, the increase in the tax burden was fifty-eight and sixty-nine one-hundredths per cent.

In this state the two outstanding increases in the last ten years are the levies for educational purposes and for roads and bridges. In 1911 the educational levies amounted to $12,635,867, and in 1921 to $42,569,238, an increase of two hundred and thirty-seven per cent in the ten-year period, the per capita of the levies being $6.09 in 1911 and $17.84 in 1921. Last year the levies for educational purposes represented thirty-nine and one-half per cent of all direct tax levies in the state.

Direct tax levies, however, do not measure the total cost of public education. It has long been the policy of our legislature to annually appropriate large sums in aid of education, such appropriations last year amounting to a little over $7,261,000. To this sum should be added nearly $1,100,000 representing interest receipts from invested trust funds. Adding direct tax levies, legislative appropriations and interest earnings together, we find that our educational revenues in 1921 amounted to approximately $51,000,000, representing a per capita educational cost of $17.18.

If we measure the cost of education on the basis of school enrollment and direct tax levies, excluding the university enrollment and levies, we find that in 1911 the cost in direct taxes per pupil enrolled in our public schools was $27.72; in 1921 it was $82.26, an increase of nearly two hundred per cent in the ten-year period.

The foregoing comparative figures are not submitted for the purpose of condemning the growth in educational cost. Next to the homes of the nation, public schools exert the greatest influence on the character of our citizenship. They are the foundation upon which our intellectual development is built; they aid in rounding out the physical well-being of the youth of the land; they call out the best that is in the minds of the young and direct it into proper channels. In brief, they determine in large measure the mental and moral character of our citizenship.

At the very inception of its history as a state, Minnesota recognized the importance of a progressive and well-supported public school system. The state constitution, declaring that "The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature to establish a general and uniform system of public schools," provides for the creation of a perpetual trust fund from the proceeds of the sale of school lands. The income arising from the fund can be used in support of public schools, but the constitution provides that the principal "shall forever be preserved inviolate and undiminished." This fund, known as the permanent school fund, now amounts to $33,750,000 and will be largely increased by future sales of school lands, of which a considerable acreage remains unsold.

Much may be said in justification of the increase in the public

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cost of education. The days of the "little red school house" have gone, just as the days of the ox-cart and the sickle have disappeared. Under the improved living conditions of today, the unsanitary school building of a generation ago, with its crude equipment, would not be tolerated. Nor would the average of the often inadequately equipped and poorly paid school teacher of a generation ago fit into the present school system. The improved school buildings, with their modern equipment and trained teachers that we demand and enjoy today are largely responsible for the growth in educational costs in recent years.

That the state should furnish its youth with the best possible facilities for obtaining a thoroughly practical education will be generally admitted. But it is possible that in our zeal for improvement we are overlooking the growing burden of school costs. In our own state last year educational expenses represented approximately forty-seven cents of every dollar levied in direct taxes.

Economy in school expenditures should be rigidly applied if growing school costs are to be halted. Let us have good school buildings, with up-to-date equipment, and let us pay salaries that are sufficiently high to attract and retain competent teachers, but if we are indulging in any fads or frills of doubtful utility to the average pupil in our public schools, let us eliminate them, and thus somewhat lighten the burden of the taxpayer.

Another cause of growing tax burdens is found in the increasing levies for highway purposes. In percentage of increase the levies for roads and bridges lead all others, the increase being one thousand eight hundred and sixteen per cent in the last twenty years. President Harding recently declared that the problem of distribution "is one of the greatest economic problems, if not the greatest problem, of modern civilization." The economic value of a good system of public highways can scarcely be over-estimated. In many commodities the cost of transportation represents the greater part of the total cost. A reduction in transportation costs means a reduction in the cost of an article to the consumer. A good system of highways, especially of arterial highways, reduces the cost of transporting the products of farm to market, thus either increasing the returns to the producer or reducing the cost to the consumer. They are of almost inestimable value when our railroad systems become tied up or crippled through labor troubles, such as we have recently gone through. In this age of motor trucks, a good highway system may prove to be the salvation of the country in times of demoralized railroad transportation.

Minnesota was slow in awakening to the economic importance of a good highway system. It is only in the last few years that any systematic policy has been followed in the building of arterial highways. The mud road, often impassable during the early spring

season, is giving place to the graveled or hard-surfaced road. When present road plans are consummated, Minnesota will have one of the best highway systems to be found in the United States.

Like any other public improvement, the cost of building highways must come from the pockets of the people in some form of taxation. It is not surprising, then, that with increased activity in road building in recent years, road taxes show a rapid increase. In 1901 the total tax levies for all road purposes amounted to only $1,097,941, or about seven per cent of the total of all direct taxes; in 1911 they were $3,719,934 or about eleven per cent of all taxes. The large increase in road taxes came in the decade between 1911 and 1921, due in part to the adoption of a constitutional amendment in 1912 authorizing a state levy of not exceeding one mill for road purposes, and in part to a growing public interest in highways, which resulted in increased tax levies for road purposes by the counties and other local subdivisions of the state. In 1921 the total levies for roads amounted to $21,040,655, or nearly nineteen and one-half per cent of all direct taxes levied in that year. To this amount should be added $5,616,113 representing taxes on motor vehicles, making a total current contribution last year to roads by the people of the state, exclusive of bond issues, of $26,656,768.

In percentage increases road taxes show an increase in 1911 over 1901 of two hundred and thirty-nine per cent; in 1921 over 1911, four hundred and sixty-five per cent, and in 1921 over 1901, one thousand eight hundred and sixteen per cent, while the per capita of road taxes increased from 63 cents in 1901 to $1.79 in 1911 and $11.17 in 1921, including motor vehicle taxes.

The rapid increase in road taxes has been one of the principal factors entering into the general increase in the tax burden in recent years. While, as already stated, the economic value of good highways is generally conceded, their construction should not be pushed too rapidly, lest the burden on the taxpayer become so great that it will retard development along other lines. The taxpaying ability of the average taxpayer is limited, and, regardless of purpose, when this limit is exceeded, the injury to the state in general may outweigh the immediate benefits derived from the levy. For this reason, the wisdom of any further increase in the tax burden for road construction, at least until normal business conditions have been restored, may well be questioned.

We have dwelt on educational and road levies at some length because they represent such a large percentage of total governmental costs. The combined burden of educational and road costs in our state last year, exclusive of federal aid, amounted to a little over $77,650,000, a sum equivalent to nearly seventy-two per cent of all direct taxes levied in the state in 1921, the per capita cost

of these two activities of government being $32.54, or $162.70 for an average family of five persons. The significance of growing educational and road costs may be better understood when we say that in totals this year they are two and one-third times greater than all direct taxes levied in the state ten years ago.

While educational and road levies lead in percentage of increases in the last decade, they are followed closely by the levies for city and village purposes. In 1911 the city and village levies, exclusive of education and roads, amounted to $8,873,712; in 1921 they were $27,376,897, an increase of two hundred and eight per cent in ten years.

Some of the causes contributing to the rapid increase in city and village taxes have already been referred to. The increase in the cost of labor and materials undoubtedly accounts for a considerable part of the increase in urban levies. These items represent a much larger percentage of the total cost of city and village government than in the other units of government.

Other factors entering into the increase are better public buildings, the extension of water and sewerage systems, better paved and better lighted streets, increased police and fire protection, the improvement of parks and playgrounds, and better living conditions generally. Nevertheless, making due allowance for all of these things, the fact remains that urban tax burdens are growing exceedingly heavy, and unless the brakes are applied to expenditures tax rates will soon reach the limit of human endurance.

There are two other taxing units in our system of local government—the county and the township—and as these units largely represent the rural districts of the state, a few figures of comparative tax levies may not be out of place.

The state is divided into eighty-six counties, each county having a governing board, known as the county board, or board of county commissioners. With one or two exceptions, these boards consist of five members elected by the people of designated districts. Among other powers and duties, county boards determine, subject to certain statutory limitations, the amount of taxes that shall be raised in any year for the support of county government and county activities.

The total of county levies in 1911, exclusive of road levies, amounted to $4,739,207, and in 1921 to $11,050,238, an increase in the ten-year period of one hundred and thirty-three per cent. This large increase in county levies is significant when we consider that such levies are largely determined by rural sentiment.

The unit of government in the rural districts of the state is the township. Township taxes are determined by the voters at the annual town meeting. Township government with us is an example of pure democracy in government. It is here that we would

naturally look for conservative tax levies, for the people who pay the taxes are in direct control of the levies. Notwithstanding direct local control, township taxes, exclusive of road levies, increased from $1,076,460 in 1911 to $2,324,164 in 1921, a growth in the ten-year period of one hundred and sixteen per cent.

Contrary to the general impression, the growth in purely state taxes has been relatively less in recent years than in that of the counties and other local subdivisions of the state. In 1911 the total of state levies, exclusive of educational and road levies, amounted to $2,702,410, representing a per capita burden of $1.30; in 1921 the state levies amounted to $3,658,451, being a per capita burden of $1.53. In the ten-year period the increase in amount of the tax was thirty-five per cent, and eighteen per cent in the per capita of the tax.

Measuring the state tax by the millage levy on taxable property, we find that the burden of the state tax was actually less in 1921 than in 1911. In 1911 the state levy, exclusive of education and roads, was $2.25 on each $1,000 of taxable property, while in 1921 it was only $1.70, a decrease of thirty-two per cent in the millage levy in the ten-year period.

Of the total levy last year for purely state purposes, amounting to $3,658,451, more than two-thirds, or to be exact, $2,634,833 of the amount represents the levy for soldiers' bonuses. The remainder $1,023,618, consists of small levies for fire and other relief, national guard armories, Itasca state park, and historical building certificates, no part of these levies being available for general state expenses. In view of this fact, the prevailing high tax rates of the current year cannot be charged to excessive state levies.

For the first time in the history of the state, no tax levy was made in 1921 for the support of the state government, the receipts from gross earnings and other special taxes being sufficient to meet all state expenditures. For years it has been the hope of many of our state officials that the time might come when the state would derive sufficient revenues from special taxes to defray the ordinary expenses of state government, and this hope was realized this year for the first time. With the expanding functions of government and the increased cost of labor and commodities it is not probable that the state can permanently abandon the revenue fund levy. However, with increasing revenues from other sources, it is not unreasonable to expect that, under normal business conditions and economy in legislative appropriations, the state will in the future frequently be able to meet the ordinary expenses of state government without asking the taxpayers for direct tax contributions.

In connection with state levies, it is well to remember that state revenues derived from gross earnings and other special taxes are more than sufficient to defray the cost of state government, state

institutions, and purely state activities. It would not be necessary to levy a state tax on property subject to the general ad valorem tax if the legislature made no appropriations in aid of schools and other governmental activities of a semi-local character. Just how far the state should go in subventions or grants is a question of considerable difference of opinion. If legislative appropriations are large, state levies must be correspondingly large; if they are small, then local levies must be correspondingly increased. In the final analysis, however, all taxes, whether levied by the state or its subdivisions, come from the pockets of the people.

The following summary of tax levies in 1911 and 1921, divided according to purposes of levies, may serve to bring out the comparative increases more clearly.

Purpose of levy	Amount of levy		Increase in	
	1911	1921	Amount	Percentage
State	$2,702,410	$3,658,451	$956,041	35
Counties	4,739,207	11,050,238	6,311,031	133
Cities and villages	8,873,712	27,376,897	18,503,185	208
Townships	1,076,460	2,324,164	1,247,704	116
Education	12,635,867	42,569,238	29,933,371	237
Roads	3,719,934	21,040,655	17,320,721	465
Totals	$33,747,590	$108,019,673	$74,272,083	220

The foregoing figures need no elaboration. They mutely testify to the growing burden of taxation. While there may be some difference of opinion as to how much farther the increases can go before taxes become confiscatory, there will be no dissent from the statement that the burden has almost reached the taxpayer's ability to pay, and that any further increase in rates may seriously retard the future development of our state.

That tax rates have already grown oppressive in many sections of the state is strikingly apparent from a study of the high rates that were levied in so many taxing districts in 1921. Last year 6 of the 86 counties of the state had average tax rates in excess of 100 mills, Itasca county being the highest with an average rate of a little over 109 mills. In 6 other counties the average rates ran from 70 to 90 mills, and in 7 counties from 60 to 70 mills.

The same excessive rates are found in many of the townships and school districts of the state, notwithstanding that local taxes

are directly controlled by the people residing in such districts. Last year 233 townships and 324 school districts in the state had tax rates in excess of 100 mills.

In 119 school districts located in 20 different counties, the rates last year ran from 100 to 110 mills; in 77 districts in 20 counties, from 110 to 120 mills; in 43 districts in 13 counties, from 120 to 130 mills; in 52 districts in 16 counties, from 130 to 150 mills, and in 33 school districts in 12 counties the rates were in excess of 150 mills, the highest in the state being the village of Northome in Koochiching county, with a total rate of 208¾ mills.

In connection with tax rates, it should be understood, of course, that these rates apply to taxable values, which, under our classified assessment law, would not average much over one-third of full value in most of the districts having high tax rates. But even if figured on full values, the rates in these districts are excessive, and in some cases almost confiscatory of property. With rates in a number of districts running from four to six per cent on the full value of property, it is not surprising that the growing discontent over excessive tax burdens is becoming so widespread in many sections of the state.

Perhaps it is only fair to say that high tax rates are not always to be condemned. Often they are justifiable, and frequently commendable. In many cases the benefits derived from the levies fully compensate for high rates. As a broad general proposition, it will be found that communities with uniformly low tax rates year after year are among the least progressive. Some of them follow the dictum that the things good enough for our grandfathers are good enough for us. Such communities are usually stagnant and are far in the rear in the march of progress. If high rates are the result of desirable and needed public improvements, and if the taxpayer is able to meet the demand without finding the tax burdensome, then they are preferable to low rates and dry rot. But if a desirable public improvement will result in a tax rate so high as to become an oppressive burden, then the making of the improvement, however desirable it may be, should be deferred until the taxpayer is better able to meet the extra demands on his pocketbook. High tax rates are not necessarily bad; oppressive tax rates are absolutely bad.

While it is quite generally conceded that taxes have grown rapidly in recent years, and that they have now almost reached the oppressive point, there is a considerable difference of opinion as to the responsibility for the increasing burden. The somewhat inelegant but often expressive phrase, "passing the buck," seems to be the favorite explanation. In not a few local districts, the state or county is charged with responsibility for high taxes, while, on the other hand, the state and county governments point to the

rapidly growing expenditures of the local units and charge them with the responsibility. As a matter of fact, no single unit of government can be charged with the entire responsibility for growing tax rates. Purely administrative expenses have grown in one unit as rapidly as in another. The levies for the two activities of government showing the heaviest growth in recent years—education and roads and bridges — have increased relatively as much under the direct control of the people as the levies made by the elected officials of the people. Indeed, in the rural districts of the state, as already pointed out, the local school district levies and the town road and bridge levies, both under the direct control of the people who pay the taxes, have increased very much more rapidly during the past five years than the corresponding levies by the state.

However, regardless of responsibility, tax rates have almost reached the breaking point. Whether the excessive rates now so generally prevailing throughout the state are due to the expansion of governmental functions, or whether they are the result of the insistent public demand for better roads, better schools, and better other things, the fact remains that tax rates have almost reached the limit of the taxpayer's ability to respond to the growing demands on his purse. Any further increase in the already heavy burden will be almost sure to retard the future agricultural, industrial, and commercial development of the state.

The remedy lies in rigid economy on the part of each unit of government — in the school district, in the township, in city and village, in the county, and in the state alike—and in the halting for the present of any further increase in those activities of government calling for heavy tax levies.

Before closing it may be of interest to refer very briefly to a tax limit law affecting levies in cities and villages, passed during the 1921 session of our state legislature, because it marks a new departure in our feeble efforts to curb extravagant local expenditures.

As already explained, our original limitation laws were based on a maximum number of mills that could be levied for certain specified purposes. In the earlier years of our history as a state the millage principle of tax limitations worked fairly well, and was a reasonably effective curb on extravagant public expenditures. But with the rapid increase in taxable wealth in recent years, and particularly with development of the great iron ore mines of the state, which immensely augmented taxable values in the mineral sections, millage limitations utterly failed to hold tax levies within reasonable bounds.

To curb the riot of public spending that had grown to almost scandalous proportions in some of the mining cities and villages of

the state, a bill was introduced in the legislature at its last session fixing a per capita limitation for local city, village, and school district purposes, the maximum per capita for city or village purposes being placed at $40, and for local school district purposes at $35.

The bill met with strenuous opposition on the part of city and village officials of the mining districts. They developed enough strength in the legislature to increase the maximum per capita levy for city or village purposes to $100, and for local school district purposes to $60. The bill was also amended to exclude from the limitations the cost of new public buildings then in process of construction, or for which contracts had been let. Had the bill passed as introduced, it would have been a reasonably effective curb on extravagant expenditures; as amended and passed, it has had but little effect on the orgy of public spending in some of the mining districts of the state.

That the maximum per capita levies permitted under the law are altogether too high is very apparent from the excessive amounts levied in 1921 in a number of districts in the mining sections of the state. While the law has resulted in a per capita reduction in a few districts, several districts have apparently accepted the provisions of the law as an invitation to increase their levies to the maximum, and have acted accordingly.

The following comparison of per capita tax levies in 1921 in non-mining cities and villages and in cities and villages located in the mining sections of the state is convincing evidence of the need of a substantial reduction in the maximum per capita levies permitted under existing laws if extravagant public expenditures are to be further curbed.

The average per capita levies in 1921 in the three cities of the first class—Minneapolis, St. Paul, and Duluth, amounted to $21.28 for all city purposes and $12.93 for local school purposes, the total average of both levies being $34.21.

There are 22 cities and one village in the state in which the population ranges from 5,000 to approximately 20,000. Of the cities in this class, 19 are in non-mining districts while 3 cities and one village are located in mining districts. The average per capita levy last year in the 19 cities in the non-mining districts was $13.97 for all city purposes and $16.75 for local school purposes, the total per capita being $30.72. In the 3 cities and one village located in the mining districts the average per capita levy was $94.27 for city and village purposes and $52.48 for local school purposes, a total of $146.75.

Of 32 cities and villages having from 2,500 to 5,000 population, 28 are located in non-mining districts and 4 in mining districts. The per capita levy last year in the 28 cities and villages in the

non-mining districts was $10.82 for city and village purposes and $14.91 for local school purposes, a total of $25.73; while in the 4 cities and villages in the mining districts the per capita levy for city and village purposes was $36.65 and for local school purposes $46.33, or a total of $82.98.

Of 82 other cities and villages having less than 2,500 population, 69 of which are in non-mining districts and 13 in mining districts, the average per capita levy in the 69 cities and villages in the non-mining districts last year was $9.13 and for local school purposes, $15.89, a total of $25.02; while in the 13 cities and villages in the mining districts the per capita levy was $74.51 for city and village purposes and $140.09 for local school purposes, or a total per capita for both local purposes of $214.60.

A recapitulation of the foregoing figures may serve to bring out the comparative per capita tax levies more graphically:

Class	Number	City and Village Per Capita	School Per Capita	Total Local Per Capita
Cities of first class	3	$21.28	$12.93	$34.21
Cities 5,000 to 20,000 population:				
Non-mining	19	13.97	16.75	30.72
Mining	4	94.27	52.48	146.75
Cities and villages 2,500 to 5,000 population:				
Non-mining	28	10.82	14.91	25.73
Mining	4	36.65	46.33	82 98
Cities and villages less than 2,500 population:				
Non-mining	69	9.13	15.89	25.02
Mining	13	74.51	140.09	214.60
Total Averages:				
119 Non-mining cities and villages	..	$17.90	$14.03	$31.93
21 Mining cities and villages	..	78.67	70.78	149.45
140 Non-mining and mining cities and villages	..	$21.88	$17.75	$39 63

In totals for all local purposes, the village of Franklin, near Virginia, leads in the mining districts with a per capita levy of $763.35, followed by the village of Marble with a per capita of $372.36. The other cities and villages in the mining districts having a per capita levy in excess of $200 for all local purposes are: Mountain

Iron $324.57; Leonidas $309.68; Buhl $307.68; Keewatin $286.98; Hibbing $236.86; Coleraine $207.79; and Taconite $202.58.

These excessive levies are imposed by people who pay but a very small part of the taxes, hence the incentive to extravagant public expenditures in so many of the mining districts. Mining property pays ninety-nine and one-tenth per cent of all taxes levied in the village of Franklin; ninety-four and one-fourth per cent in Marble; nearly ninety-nine and three-fourths per cent in Leonidas; over ninety-six and three-fourths per cent in Buhl; ninety-six and one-half per cent in Keewatin; about ninety-five and three-quarters per cent in Hibbing; ninety and one-fourth per cent in Coleraine, and a little over ninety-two per cent in the village of Taconite.

In 3 cities and 10 villages, located in the mining districts of St. Louis county, the total levies last year amounted to $12,756,754, and of this amount, $11,908,520 was levied on property connected with the mining industry. In other words, last year in these cities and villages mining property paid nearly ninety-four per cent of all tax levies. It is entirely within reason to say that if the tax burdens were distributed among the residents of these cities and villages in the same relative proportion as in the other cities and villages of the state, tax levies would be very much lower than they are. It is always easy to spend the other fellow's money.

No one desires to deprive the municipalities of the mining districts of needed, and even liberal public revenues for the support of all proper functions of municipal government, or for the building and maintenance of modern and well-equipped public schools with an efficient and well-paid teaching staff. But when tax levies run riot, as they have in some of the mining districts of the state, it is time to call a halt on further extravagant public expenditures. We believe that no one would seriously contend that any such excessive levies would be made if the people who control the levies paid the taxes, as they do in non-mining districts. In districts where ninety-five per cent of all taxes is paid by a few people, excessive levies will almost invariably be found.

It will be generally admitted that mining districts are frequently confronted with more complex administrative problems than non-mining districts; that economic conditions are subject to more frequent, and often more extreme changes in the former than in the latter; and that because of these differences, larger public revenues are necessary in mining than in non-mining districts. But admitting their greater needs no one will seriously contend that the cost of local and school governments is from five to ten times greater in mining than in non-mining districts, as the levies of last year indicate. The present excessive levies in some of the mining districts point to either unwise and unnecessary expendi-

tures, or wasteful extravagance in the administration of public affairs. Whichever may be the cause, it is not a wholesome condition and should be speedily remedied.

While tax limitations should always be sufficiently liberal to permit of the raising of ample public revenues to meet the reasonable needs of every community, any amount permitted in excess of such reasonable needs is almost sure to spell extravagance in public expenditures, and when, as already stated, such extravagance runs riot, it becomes a public menace because of its demoralizing influence on the public conscience, not only in the communities immediately concerned, but in the entire state. No community should be permitted to impose taxes on business or property in excess of its reasonable needs, regardless of whether the tax is paid by large or small property owners. The necessary revenues to defray the cost of the efficient, and at the same time, the economical administration of public affairs must come from a tax on property. The burden of the tax, however, should be so apportioned that it will fall equitably and justly on the property taxed, regardless of ownership, and no departure from this principle can be justified on the ground that the property is owned by a wealthy individual or corporation. Such distinction is recognized in neither law nor morality.

While a per capita limitation is a new departure in restrictive tax legislation in our state, the principle has been incorporated into the charters of most cities operating under so-called home rule charters. In the final analyses, perhaps nothing measures the revenue needs of a city or village more accurately than population. It determines the area of a city or village to a considerable extent; it is the principal factor in the housing problem; in necessary sanitary regulations; in police and fire protection; in the lighting, grading, paving and up-keep of streets; in necessary educational facilities, as well as in practically all other activities of civic governments. The revenues required to defray the costs of all of these functions of local government can be predicated on population with a much greater degree of accuracy than on taxable values.

That a liberal policy should be pursued in fixing per capita tax limitations will be generally admitted. At the same time, they should be sufficiently restrictive to prevent the imposing of unreasonable or unnecessary tax burdens on business or property. The development of the state and its industries will be best promoted by imposing such limitations as may be necessary to curb extravagance in public expenditures, and at the same time elastic enough to meet every demand for the wholesome, wise, and sound administration of progressive civic government.

And now, just a few words in conclusion. I want to answer a

question that I know some of you would like to ask, but your modesty forbids. Why expose your rapidly growing tax burdens; will it not hurt your state?

Let me answer your anticipated question by saying that while truth is unpalatable at times, in the end it is wholesome and beneficial. Personal introspection is good for us. I have discussed our growing tax burdens frankly, and without any attempt at concealment or palliation. They are growing heavier year by year, and will soon reach the danger point. It is high time that our people awoke to the situation, and if the figures and comparisons I have given you will aid in arousing them from their tax lethargy, I will have accomplished something worth while.

But how about your own state? Are tax burdens not growing heavier with you? Is it not possible that if you compare your tax burdens of today with those of ten or fifteen or twenty years ago, you, too, will find a large increase? If not, let me say boldly, you are living in the past and not in the present; you are lagging in the march of progress, for if you are not moving forward, then, relatively, you are moving backward. If you are numbered among the forward-looking states, as of course you are, you, too, could unfold a story of growing tax burdens, and, let me frankly confess in this conviction I find some consolation, for there is force in the old adage "misery likes company."

However, notwithstanding the somewhat discouraging tone of my message this morning, I am not a pessimist. I have not lost faith in the future of our state. But in order that our future may not be jeopardized the strictest economy consistent with efficient and progressive public administration must be practiced by every department of government. New enterprises not urgently needed should be deferred until the taxpayer regains his lost equilibrium. Let us halt any further increase in public expenditures until the taxpayer catches up with himself. Let us make and keep taxes our servants and not permit them to become our masters.

CHAIRMAN LESER: There will be no opportunity this morning to discuss this paper, but there may be time later in the conference. The next subject deals with special tax commissions. It is rather a coincidence, I imagine, that at a session held eleven years ago in Richmond, I presided at a round table discussion when that was the subject of discussion — the method of procedure of state tax commissions and the general difficulties they encounter. Mr. Dutcher, a member of the Iowa special tax commission, who was slated for an address this morning, is unfortunately unable to be here, but we are not handicapped on that account. I remember in the early days I never thought that a session of the national conference was complete unless I saw the smiling countenance of

Mr. Brindley of Iowa. I missed him for a number of years, but he is back in the fold, and is here to take the place of Mr. Dutcher; he will tell us something about the difficulties encountered in the attempt to modernize a state tax system, not only with reference to Iowa but with reference to any state—Mr. Brindley.

John E. Brindley of Iowa: Mr. Chairman and ladies and gentlemen of the conference: I regret very much indeed that Senator Dutcher could not be present at this time. He is one of the leading attorneys of our state and a very able, constructive member of our state senate; but in his absence, and on rather short notice, I will do the best I can to enumerate some of the problems which we have been considering in their relationship to similar problems in other states, and I shall try to keep within the time limit.

Now, the first thought that I desire to present to you is the fact that any special commission, whether it is a legislative tax commission or is otherwise constituted, should do what members of our commission very wisely did at the beginning of their deliberations, namely; they put aside any preconceived notions regarding the tax system as a whole, or any part of that system, determined to go into the problem in a sincere way with the idea, if possible, of formulating a constructive program.

I believe when I outline a few of the tentative conclusions, which I think in most cases will be final conclusions, incorporated in bills to revise the tax system, you will agree that they have followed that intention quite religiously.

The second thought to bring out at this time is the almost unanimous feeling of the special commission, even early in its hearings—and I might say that we held very extensive hearings; took stenographic reports of the same, which the secretary, Mr. A. H. Davison, has very carefully condensed for the benefit of the commission. I say the conclusion was reached that one of our most important questions in Iowa is that of tax administration. Not only did they reach that conclusion but they reached the conclusion that a bill to change the system of administration should be separate and distinct from other bills to make substantive changes in any parts of the tax law. I think in 1912 our special tax commission made a mistake along that particular line. As secretary of that body I did my best to induce them to do just what the present commission, on its own initiative and after a very short investigation, decided to do. If you undertake to incorporate in one very comprehensive measure, not merely the administrative changes in the method of assessment and the review of property for the purposes of taxation, but also a long string of substantive changes in your tax laws, why of course as no chain is any stronger than its weakest link, the opposition will pile up, and your very lengthy

and much labored measure is likely to find itself in the legislative waste-basket. I think it is wise to place in separate bills each substantive change that is desired, and let every tub stand squarely on its own bottom when it comes to the matter of practical legislation. That the commission has decided to do.

With reference to questions of administration, without going into detail, I might say that the special commission has been very greatly impressed by the repeated recommendations of such commissions as that of Kansas and I think Minnesota, the Dakotas and Wisconsin — repeated recommendations — to make the county rather than the smaller unit of government, the unit for the assessment of property in the State of Iowa.

The commission has therefore, for the time being at least, and I think finally, concluded to recommend that local assessors and local township and city review boards be abolished as out of date and not in harmony with the present economic conditions, and in lieu thereof we should provide for an appointed county assessor, with deputies to do the work of the assessment of property in the respective counties. That, of course, is a most far-reaching change. We all appreciate that.

Mr. J. G. Armson: May I ask you who appoints under the proposed bill?

Mr. Brindley: That is a question which under the proposed bill is one of the very important problems, and for the time being we have agreed that the appointment of this assessor shall be vested in a county board, composed of the chairman of the county board of supervisors — you call them county commissioners in Minnesota, I believe — the county auditor, the county treasurer, and, I think, the clerk. This board, however, cannot dispense with the services of a competent county assessor without granting the assessor an appeal to the state board of assessment and review, which we hope to create in this measure. Now that, of course, is a fundamental and far-reaching administrative change which would be of interest to many states.

Another point in that connection which I might mention is a feeling on the part of the commission that perhaps some expense can be saved and possibly a very much greater listing of moneys and credits or intangibles secured if we provide a plan whereby, on sheets prepared by the state board, distributed by the county assessor, the taxpayer is required to list—not value—merely list his own property for the purpose of taxation.

Mr. Armson: Real and personal?

Mr. Brindley: Yes. That is rather a unique suggestion. I am not passing any arbitrary judgments pro and con regarding it. I

should like to have as much light as possible on that and also upon the other questions that I have just mentioned. That is partly what I am here for.

In addition, this administrative measure will provide for the creation of a state board of assessment and review—in most states it is called a tax commission—to take the place of our present executive council, composed of the governor, the auditor of state, the treasurer of state and the secretary of state. The conclusion to make a recommendation of this character is, of course, no reflection at all upon the council or any member of it, but merely a recognition of the well-known fact that the labor of making the original assessment of the property of public service corporations, and the labor of supervising the work of assessment and taxation, including the intelligent review of property, is a labor altogether too extensive to be vested in an ex-officio body. Therefore, in brief, our administrative bill again will provide for a state board of assessment and review, with the customary powers vested in such state tax commissions as those of Minnesota, Wisconsin and so forth, including of course the power to adjust not merely aggregate values over the state—aggregate values of counties or taxing districts—but the power to adjust individual values on appeal, and to make reassessments.

That in brief is the administrative problem which confronts the State of Iowa, a problem which has confronted many other states and still confronts many states. Whether we shall be able to accomplish at this coming session changes which some of our neighboring states have not been able to accomplish after exhaustive efforts, running over a period of years, will remain to be seen. Of course every one recognizes the great tenacity with which our good people cling to what they are pleased to regard as local self-government.

Leaving, then, the problem of administration, I want to outline only briefly a few of the substantive changes which will be of interest to the delegates of this conference, and on which we are seeking all the light we can possibly obtain.

First of all, I want to refer to a rather unique suggestion, which I believe originated with the state officials of our federation of farm bureaus. I refer to the suggested change which will be proposed in Section 1305 of our code which defines the valuation of property for the purposes of taxation. In most states that section, or a similar section, uses the words "actual value," "cash value," "true value," or some phrase of that kind, which I believe the courts generally hold to mean what property will bring in the market in the ordinary course of trade. This very fundamental part of our law and of the laws of many other states has been attacked by numerous persons on the ground that market or cash

value of property for purposes of taxation is not necessarily a just and equitable basis for distributing the tax burden as between various classes of property. The suggestion has been made and incorporated in this rather brief bill that the law should be amended to provide that in assessing or valuing property for purposes of taxation, we should take into consideration not merely the market value of property so called, but that we should take into consideration—that means the county assessor—past, present and prospective average earnings of property.

Now, I apprehend that it is a matter of fact—the Judge will be interested in this—that of course there are many cases in our state, in these times of economic depression where the tax on farm lands, for instance, has absorbed more than the entire rental obtained from the farm.

I have in mind one case of a cash rental on a quarter section, of twelve hundred dollars, on which the tax that the man had to pay was twelve hundred and sixty-one dollars and some cents. Now, I am passing no judgment again, no arbitrary judgment upon the merits of this suggestion. I thought it would be of distinct interest to bring it out here, and we are seeking light on that, along with other questions. Another change of a substantive nature, which I think will be proposed, is one where we shall run counter to your situation in Minnesota, by the way, Judge, and to that in four or five other states. For about a quarter of a century, to be specific since the Code of 1897 we have taxed in Iowa on one-quarter of the value; that is, we list property and then we take one-fourth of it. For example, talking about millage rates, the millage rate in the city of Ames, where I live, is 234.5 mills. It is awful, when you commence to think—it is awful anyhow—but especially when you commence to think that the listed value is perhaps but sixty per cent of the actual value, and the taxable value is one-fourth of that, therefore the 234.5 mills levy is on, say, offhand, fifteen per cent of the actual value. We are proposing to abolish this one-quarter or fractional assessment, and in that connection I desire to make a suggestion which will again be of interest to every state seeking to fundamentally change its tax laws. In making this change we are up against changing not merely all the tax limitations to which the Judge has been referring in his very able paper, but also the debt limitations of the code. And not merely that, but also the question, if you please, of providing a rather iron-clad section which will prevent the increase of taxation under this proposed system, in comparison with the amount of tax paid under the old system. Now this, in my opinion, is one of the important sections that we are attempting to amend, and in this connection I want to give you a concrete illustration of the importance of that. In our commission's report in 1912 we made this same proposal

and we also wrote into the bill a section of law which would have prevented an increase of taxes in the event that this bill had been made law by the general assembly. It was put into the legislative waste-basket. Now, what happened in Iowa? The thing happened which we are trying to guard against and which every state should guard against in formulating a system of this kind. Why, the executive council, for good reasons, I believe, boosted the aggregate valuation of Iowa by two hundred millions of dollars, as a state board of review, but after that had been done, the local levying bodies did not make the reductions in the levy, as requested by the governor — Governor Clark at that time — with the result that by the mere fiat of arbitrary administration I have estimated that in the following year the people of Iowa paid a tax of five million dollars greater than they should have paid. Now, taxation is a legislative function, properly so, and not one which should be handled in that sort of a way.

In the minute remaining I will state that we are preparing a bill—in fact our chairman, whom I see present, Senator Van Alstine, is preparing a bill—providing for a personal income tax to take the place partly of the flat rate which we now have on moneys and credits, and in that connection we are again seeking light with reference to how this can be done, and its relationship to the well known Richmond decision, as relates to the taxation of bank stock. We are also considering the question of a corporation or business income tax, and finally some modifications in our inheritance tax, in accordance with the suggestions made by the income tax and inheritance tax committees of the national tax association, and finally we are considering a special gasoline tax. (Applause)

Chairman Leser: We shall have time now for two or three five-minute talks, bearing on Mr. Brindley's subject. One of the sensible things that the states have recently been doing is that of naming expert advisers to their special tax commissions. The State of Washington has named Professor Harley Lutz of Oberlin, and he knows enough to tell us something in five minutes that is worth hearing.—Professor Lutz.

Professor Harley L. Lutz: Mr. Chairman, ladies and gentlemen: I merely want to offer certain general suggestions on a subject that is not susceptible of generalized treatment, if that is possible. It is not susceptible of generalized treatment to discuss the work of special tax commissions, because the problem varies in each state from that in every other state. You have constitutional limitations, you have certain statutory limitations imposed upon the commission; it is instructed often to attempt to solve a certain particular problem. You have very often a limitation of funds, and there will be many other reasons which I need not detail,

which go to show that in each case it is a special problem; and yet, if I may present just one or two generalized comments upon the procedure of a special tax commission, when such a body has been created, I should like to do it.

In the first place, with regard to the technique of such a body, there are various procedures which have been followed in different states. In some states the special commission will travel over the state and invite interested parties and organizations to attend public hearings and present their views, and they accumulate stenographic reports by the bushel basketful, and of course nobody can wade through them. Nobody is interested in wading through them. So, when the work of a special investigation of taxation begins by means of a public hearing, I think we may put this aside at the outset as being practically worthless, except possibly for the purpose of indicating the way in which public sentiment drifts, and that is, as I want to suggest later, really a very important matter. I think it can be gotten at in other ways than by means of a general public hearing. The advice and assistance of the regular tax officials of the state is always of the highest importance. I am of the opinion, however, that in a great many states, because of their other duties and possibly for other reasons, the state tax officials have not always at their immediate command the kind of information, the kind of material that will serve best the purposes of a special investigating commission. So, we are driven back to the conclusion that if an investigation of this sort in any state is worth while, it must be done carefully and frequently by trained investigators, who are able to go into the problem involved and compile material upon which a sound step forward may be taken. It is not worth while to spend one thousand dollars in a tax investigation, as some states have recently attempted to do—they are simply wasting that money. Unless you are willing to provide a special tax investigating commission or committee, with funds and with ability to draw upon those who may contribute in a degree sufficiently ample to get results, there is no use undertaking it. And so, my first generalization is, that if work of this sort needs doing, it must be done well, and it cannot be done well, except by those who can be drawn upon for that character of work. A second general suggestion is the manner of handling the results, assuming, of course, that those results are sound, and assuming that the commission, as a result of its inquiries, has developed a line of suggestions that are deserving of incorporation into the state tax system. I have seen more than one case and you are doubtless familiar with instances in which a very worthy report or very worthy suggestion has fallen by the wayside, has fallen on barren ground. I am becoming more and more convinced that quite as much importance attaches to ground work, the preliminary ground

work, as well as the salesmanship displayed in putting this suggestion or these suggestions across, as in the actual study of the problem itself. The study of the problem itself, of course, is fundamental, but unless you can convince the public, unless you can convince the legislature and the governor that you have a suggestion worth while, you will have wasted your time and the state's money. And so I should like to emphasize particularly this matter of salesmanship of the reforms that you are working out. That needs very careful publicity. It needs very careful engineering. I realize that sometimes the political situation in a state is a very delicate matter—has to be handled with gloves; asbestos gloves—and sometimes with tongs, and so you have to take all those factors into account, but the salesmanship of the results is very important.

CHAIRMAN LESER: You have one minute more.

MR. LUTZ: In that one minute let me make this further suggestion in regard to the personnel of such a committee: I should prefer, and I should always advise a small rather than a large committee. I may say that personally I should prefer to have a minimum of membership of the professional politician type. If I could have a committee of business men, of public-spirited citizens, to work with, I should prefer it, of course, every time, to the committee of the professional politician type, and yet, because of that factor in the situation, the ultimate success of it sometimes makes it necessary to include such members in the organization. And so with these generalizations, let me make my contribution: In the first place, greater attention to scientific technique, a greater amount of time allowed for such investigations, and a more careful selection of the personnel of a special tax investigating committee. I thank you.

CHAIRMAN LESER: The State of Michigan has under way an investigation of its tax system, with a view to reform, and has very fortunately also invited an expert adviser as a member of that committee, a man who has been a member of the national tax association and a delegate to a good many of our conferences. He is here today, and we should like to have a five-minute talk from Mr. George Lord at this time. Is he here?

GEORGE LORD of Michigan: Mr. Chairman and gentlemen of the conference: I dare say that the problems in Michigan are quite similar to the problems that you have in your respective states. I do not agree with the last speaker in regard to the public hearings conducted by special tax commissions. In Michigan we have received most helpful suggestions from the tax-paying public at these special hearings that we have conducted in various parts of the state. I think we, as public officials, and particularly academic

authorities, too often neglect the fellow who pays the freight. In other words, we exclude from our consideration of tax questions the man who pays the taxes, and that I think is a very great mistake. I think the greatest problems that we have in Michigan are in connection with road building, the cost of the building and maintenance of our public highways, and the tax-exemption feature. In Michigan we have quite a problem to raise the funds with which to build and maintain roads. We have resorted to bond issues to the extent of something like twenty or twenty-five million dollars, and we have authorized about twenty-five million dollars more to be issued now. The interest charges on this indebtedness is enormous, and the taxpayers of course have to pay it. Several proposals have been made by various people as to how to raise this money without resorting to bond issues. One of the things proposed is a tax on gasoline, ranging from one cent a gallon to six cents a gallon.

In regard to these proposals, the automobile manufacturers and the automobile drivers object to such a tax. The farmer, of course, wants it, and quite a few of the professional people. We find the same things in other proposals that have been made to our commission. No matter what new source of revenue is proposed, you will find that various property interests will object, so that we have a continual clash between the various property interests in the State of Michigan, as well as in the other states, as to what shall be done to raise the needed revenue for the support of state and local governments.

One of the great problems we have also in Michigan is the question of tax exemption. You would be interested to know that during the last eight years there has been invested in Michigan—Michigan money—over two hundred and fifty million dollars in foreign securities alone. That is an enormous sum of money. That does not take into consideration the amount that has been invested in Michigan securities. These are securities issued by foreign countries, by other states and by municipalities located in states other than Michigan. So that two hundred and fifty million dollars of Michigan money has gone into foreign countries, into other states and into other municipalities, to build up industries there and support the governments of those states. That is one of the great problems; how to overcome that. We propose as a commission to repeal the statutory provision that we have in our law providing for exemption of that class of securities, particularly the foreign securities, and provide for a reasonable annual contribution to the support of government by the owners of this class of property or securities. I think we are all agreed that tax exemption has become a real menace to the industrial development of all states. It does not apply only to Michigan, but every state feels that the time has come to call a halt.

Just one word more in regard to public expenditures. I often tell our people in Michigan that the surest way to keep their taxes down or to lessen the amount of taxes is to stop spending so much money. I think that can be done if the people themselves will wake up to the seriousness of the situation as it exists all over this land of ours. I think that if the people will take steps to elect to public office more efficient men, we should soon see a lessening of the cost of government. It is quite the fashion nowadays for public officials to hunt for new sources of revenue, so that they will have a grab-bag into which to put their hands for the spending of money. That I think is one of the important things, and that can only be done by a campaign of education, and, Mr. Chairman, I am going to suggest while I am on my feet, two things that I think this association might do with a great deal of profit to the people of the United States. One is that a publicity committee be appointed at this conference, for the purpose of getting information relative to the tax situation all over the country, in every state, into the public press. I don't think it is quite sufficient to have it published only in the bulletin issued by the national tax association, because that bulletin goes only into the hands of the members of the association. That is not sufficient; it should go into the public press.

Another thing I would suggest would be, if possible, if you can get the funds to do so, to send a corps of lecturers, say one-half dozen fellows, to cover a number of the more important states at least, and give a series of lectures on the seriousness of the tax situation, especially in regard to public expenditures. I don't believe it would be any great difficulty to raise sufficient funds at least to send out one-half dozen fellows, who would be able to educate the people as to the seriousness of the situation, especially in regard to public expenditures. I think if that was done that we should soon see some improvement.

CHAIRMAN LESER: I would suggest to Mr. Lord that he renew his proposition before the resolutions committee.

There is another instance of intelligence shown by a state, to wit, the State of Utah, in asking Professor Bullock to assist them in reforming their tax system. There is a special commission at work also in the State of Pennsylvania. Is Senator Woodward from that state present?

(No response)

CHAIRMAN LESER: Apparently he has not arrived. That being so, we have now about fifteen minutes left in which to hear Mr. William Bailey make a ten-minute speech on the question of the taxation of migratory animals.

WILLIAM BAILEY of Utah: Ladies and gentlemen, I fully appreciate the fact that many of you will not be interested in this question, therefore if any of you want to go to sleep or leave the room, you have my consent, and I know you are tired. I shall not attempt to read this paper. I will give you a little short synopsis of what this committee which has been working for two years on this question has done. I would much prefer to follow up the subject introduced by Mr. Brindley, and tell you what we are doing in Utah. I hope that before the conference is over Professor Bullock will have the opportunity to tell you what he found in our state and what we are endeavoring to do. I am going to say, however, to watch us and we will show you the way.

This question of migratory live stock is confined entirely, I think, to the public land states, and it has been quite a problem with us for a long while. For instance, one-half of the state land is unsurveyed, and as to public lands, many of the western states are in that condition. We have the public forests, which are handled by the government. Animals, live stock, cattle and sheep, graze upon these forests and along the state lines and are in several states during the year, and the question of taxes upon this stock has become quite a problem with us.

"Transient live stock" is defined in different states as stock grazing in more than one county in the state and also in several states. We have various methods applied: For instance, in one of the states close to us they always charge a full year's tax for a person that goes into that state from another state, plus fifty cents a head for cattle and twenty-five cents a head for sheep, while other states will charge only for the time that they are in the state, and that at the regular rate upon other property within the state. In going into the matter, we have outlined court decisions upon this point. The courts are just as far off as we are ourselves, because you can get any kind of a decision you want.

We find that in some instances it is held that when cattle are brought into a state after the regular day of assessment, which is January first with us, they are not assessable, still another state holds that they are, and so it goes, until we find a lot of confusion.

There is the question of interstate cattle being driven or taken to the market, as to how they should be treated. We have a lot of court decisions affecting that; and this is the gist of the whole thing, my friends, that the courts have held that when cattle and sheep are brought into a state, and have been assessed, they ought not to be assessed again. For instance, here is an illustration; a bunch of sheep, which is often the case, start way off in Oregon and are driven to the Nebraska market, and it takes all summer for them to go. They made five hundred miles and it took them a little over two months to make the five hundred miles; what

proportion of the tax ought to be paid to the states through which they passed? That is the problem we have. There are a lot of other things connected with it; for instance, the question of grazing cattle and sheep in the same locality, a thing very dangerous in some of the states, and a question that has to be handled by the states themselves.

Your committee feels that the public lands belonging to the government should be free to all people, and that a man owning cattle, whether he grazes in one or three or a half-dozen states, ought to pay a tax but once, and that the states should co-operate, one with the other, to the end that if a bunch of sheep or cattle is brought into a state and kept there for three months, one-quarter of the year should be collected for that state, and so on through. There is the question of list, there is the question of numbering them, and all of these things, which you public land people understand as well as I do, and it is not necessary for me to go into that for you, so that is the recommendation, and, my friends, that completes my story. Thank you.

REPORT OF COMMITTEE ON THE TAXATION OF MIGRATORY LIVE STOCK

The difficulties involved in the taxation of migratory live stock are confined almost entirely to the western states, where there are still large areas of the public domain, used only for grazing purposes, and where there are national forests, for the most part in the mountainous regions, used for this purpose also, but under regulation of the department of the interior. Quite naturally, under these circumstances the owners of the live stock are more concerned with the nature of the grazing lands than with the boundary lines of the counties and the states. The forest reserves provide grazing during the summer months, but with the advent of winter, the live stock are taken from the mountainous regions of these reserves and are driven to the deserts, where they are able to subsist during the winter months. These winter ranges may extend into several counties and sometimes into two or more states. Thus the live stock are moved from place to place, where feed is most abundant, without respect to county or state boundaries. This all comes about in the natural course of the live stock business in the West, and at times, during a period of draught or excessive snowfall, the movement of live stock may be increased considerably, in order to cope with such unusual climatic conditions.

From the above it may readily be seen that the territory over which live stock may graze is not in any way controlled by the county or state boundaries, but is determined solely by the climatic conditions, the nature of the feed and the season of the year. All

of these factors, when brought together, develop into serious difficulties for the taxing officials. It is the purpose of this report to analyze the laws and court decisions now governing the taxation of this kind of property and to determine upon certain principles of justice and equality, which should be used as a basis for uniform legislation.

Our investigations show that a great lack of uniformity exists, not only in the statutes governing this situation in the various states but also in the legal decisions, as may be seen from the following illustrations.

Definition of Transient Live Stock

For instance, Utah defines transient (or migratory) live stock as stock brought into the state by any person or persons, for the purpose of being grazed or fed for any length of time exceeding twenty days; and all stock which is driven or removed from one county to another or from that state to any other state, for the purpose of being grazed or fed, for any length of time exceeding twenty days. Nevada, Wyoming and Colorado define transient live stock similarly, with the exception of the length of time. In other words, these four states define transient live stock as inter-county and interstate. On the other hand, Montana, Idaho, Arizona and Oregon confine the definition to inter-county stock only; while Washington limits the term to the home county, New Mexico to interstate, and California gives no definition of the term at all.

Listing by Owner of Transient Herds with County Officials

Utah, Nevada, and Colorado require the listing by the owner of transient herds with county officials. Wyoming requires not only listing of interstate entrance, but after assessment in the original county, listing of removal, whether from county or state. Montana requires, in addition to the general information on listing, a statement showing the full time during the current year that the live stock has been or will be within any county or counties, other than the home county, and besides, a listing on entrance or removal from any other county. Idaho requires listing in the original county and in subsequent counties; Arizona requires also a statement of future movement of live stock. In Oregon and Washington, only listing is required, while in New Mexico not only is listing of entrance required, but also of subsequent movement

Certificate of Assessment from County Officials

On the certifications of assessment from county officials there is again no general uniformity. For instance, Utah and Nevada require a certificate of assessment from county officials, while none of the other public land states requires anything but a tax receipt,

except Colorado, where a certificate of assessment will be furnished upon request by the owner of the county official.

Tax Rate

On the question of tax rate there is some degree of uniformity, i. e. the last rate, or the rate effective during the last preceding tax year prevails. This rate, in most of the public land states, is the rate of the home county. However, in Utah, Nevada, Wyoming and Colorado the rate of the county in which first assessed, applies.

Collection and Penalty

On the question of collections, penalties and forfeiture there are almost as many different conditions as there are public land states. In Utah, for instance, failure to list with county official or refusal to pay taxes or give bond, subjects the owner of live stock to a fine of from $10 to $300, and if the owner attempts to move live stock from the county, before the settlement of civil action to collect taxes (if civil action has become necessary), subjects him to fine or imprisonment or both. Nevada, Oregon and Washington have no penalty prescribed. In Wyoming failure of county officer to perform dates is a misdemeanor and subjects him to a fine of from $50 to $500, and failure of owner to make listing subjects him to fine or imprisonment or both. Montana subjects the owner to a fine of $100, for not listing live stock with county officials; Colorado provides for both fine and imprisonment for the county official issuing a fraudulent certificate. Idaho makes the owner or agent guilty of a misdemeanor who refuses to make the statement required under its laws, or makes a false statement, or who removes live stock on which tax has not been paid, and upon conviction, subjects him to imprisonment for from thirty days to six months. In Arizona, failure to file statement of listing is a misdemeanor, and in New Mexico a penalty of twenty-five per cent additional assessment is made for failure of the owner to list his transient live stock with the proper officials.

Taxes upon Interstate Movement of Live Stock

In Utah credit is allowed, which is proportionate to the time that the live stock are outside the state, provided, however, that no credit in excess of fifty per cent of the total Utah taxes is allowed. Nevada, on the other hand, makes no reductions for taxes paid in another state, while Wyoming taxes foreign live stock for the full year, unless such foreign state assesses Wyoming live stock on a proportional basis, in which case Wyoming reciprocates. Montana, Idaho and Arizona make no reference to the subject. Colorado subjects the owner to tax for the entire year, if live stock is assessed prior to September first, after which date it exempts from

tax for the calendar year. Oregon and Washington subject foreign live stock to a tax for the entire year, while New Mexico taxes only for that proportion of the year actually spent within the state. The California statutes are apparently silent on the subject of assessment of migratory live stock.

From the following legal decisions that have been handed down in some of the Western states it is evident that even the courts are at variance in their opinions on the principles of taxation of migratory live stock.

The Wyoming court has ruled that in order to render live stock taxable, under an act providing for taxing live stock brought into the state for the purpose of being grazed, an intent that such stock is to remain in the state permanently is unnecessary. *Kelley* vs. *Rhoads,* 51 Pac. 593.

Also, that when sheep were driven into the state, and in eight weeks' time traveled a distance of 500 miles to a railroad station, and as they traveled, they grazed over an area of a quarter of a mile wide and were taken through inclosed pastures and on the public domain, without following any public highway, and that nearer stations on the same railroad could have been reached without coming into the state, the claim that the plaintiff brought the sheep into the state for the purpose of grazing was supported by the evidence. And it was held in the same case that they were liable to taxation in Wyoming, although the owner testified that he was transporting them to another state, since they acquired a situs in the state for the purpose of taxation. *Kelley* vs. *Rhoads,* 63 Pac. 935; 188 U. S. 1.

This court also held that where sheep had been bought for feeding purposes in adjoining states, for the purpose of transporting them to Nebraska feed yards, and had been driven into Wyoming on August first, and it took three months to drive across the state, a distance of 500 miles, this was a similar method of transporting sheep to that practiced by residents of the state, in driving sheep eastward for shipment, and the evidence was sufficient to show that the sheep were brought into the state for grazing, and that when these sheep were shipped by rail, from a point a few miles after they crossed the line, into Nebraska, they did not become subjects of interstate commerce until their shipment in Nebraska, and therefore were subject to taxation in Wyoming. *Carton* vs. *Board of County Commissioners,* 69 Pac. 1013.

A very important distinction arises as to the question of when the transportation of live stock is interstate commerce. Several of the courts have passed on specific instances, as follows:

In Wyoming, an act providing that all live stock brought into the state for the purpose of being grazed should be taxed for the fiscal year during which they were brought into the state, and

which vested the county assessors with power to collect the same, as soon as the property was brought into their counties, was held not to be in conflict with the Constitution of the United States, article 1, section 8, paragraph 3, which provides that Congress shall have power to regulate commerce among the several states; also, that the act was not in conflict with article 4, section 2, which provides that the citizens of each state shall be entitled to all the privileges and immunities of citizens of the several states, nor does it conflict with Amendment XIV, section 1, which provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. *Kelley* vs. *Rhoads,* 51 Pac. 593.

In Montana the court held that property being transported in interstate commerce, while actually in transit through the state, was not taxable. *Hayes* vs. *Smith,* 192 Pac. 615.

Another angle of the definition and classification of live stock has been brought out in cases involving the feature of equality and uniformity of taxation, as follows:

In Colorado the court held that as the constitution of the state impliedly required equality in the burden of taxation, taxes could not be assessed against sheep driven into the state in July for a few months' grazing. *Carbon County Sheep & Cattle Co.* vs. *Board of Commissioners,* 152 Pac. 903.

In Montana the courts have held that the state is authorized to make a proper classification of property for the purpose of taxation, but a proper classification implies that there exist real differences, as between the subjects constituting the different classes, and excludes the idea of arbitrary selection; also, that the state may designate one day, as to which the assessment of property belonging to one class shall relate and a different date as to which the assessment of property belonging to a different class shall relate, but it may not discriminate against particular property belonging to any class; and the same court held that an act providing for the taxation of live stock brought into the state for grazing after March first, without providing for taxation of live stock brought into the state after such date, for purposes other than grazing, showed such lack of uniformity as to property in the same class as to be unconstitutional. *Haycs* vs. *Smith, supra.*

While in Washington it was held that an act providing that live stock driven into the state for the purpose of grazing after the first Monday in April in any year should be assessed for taxes as if it had been in the county at the time of the annual assessment, was not unconstitutional, as discriminating between live stock and other property. *Wright* vs. *Stinson,* 47 Pac. 761.

And in Wyoming it was held that a similar statute did not violate any principle of uniformity and equality in assessment, under the

constitutional provision that all taxation should be equal and uniform, nor was it in violation of the constitutional provision that "all property except as in the constitution otherwise provided shall be uniformly assessed for taxation, and the legislature shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal." *Kelley* vs. *Rhoads*, 51 Pac. 593.

On the question of collection and penalty, the courts have not made many decisions, but they have held in Colorado that one who appeals from an assessment of taxes to the board of county commissioners, on the ground that the taxes are illegal, is not thereby precluded from resorting to the courts to test the validity of such taxes. *Board of County Commissioners* vs. *Wilson,* 24 Pac. 563.

And the Washington court held that the power conferred upon the sheriff to collect the taxes levied on stock driven into the state for grazing purposes, without special authority from the assessor, was not a violation of the constitutional rights of the owner. *Wright* vs. *Stinson, supra.*

In Wyoming it was held that the authority of the county assessor to collect the tax as soon as live stock was brought into his county, was not in conflict with the United States Constitution, article 1, section 8, paragraph 3, which provides that Congress shall have power to regulate commerce among the several states, and in the same case it was held that when the county assessor, in company with a deputy sheriff, demanded payment of the tax, and when payment was refused, threatened to seize and sell enough of the sheep to pay the taxes and costs, and the agent thereupon paid the tax, such payment was involuntary, and could be recovered, if the tax was illegal. *Kelley* vs. *Rhoads,* 51 Pac. 593.

In Kansas the court held that an injunction could not be maintained to prevent the collection of a tax which the plaintiff justly ought to pay, for mere irregularities in the proceedings of the assessor or other taxing officer. *Hudson* vs. *Miller,* 63 Pac. 21.

The question of liability for taxation in the various states for portions of the tax year seems to be an important feature of the different decisions; in fact it is the most important question affecting transient live stock, for on that point rests the question of whether this class of property shall be fairly taxed or be overtaxed.

The Colorado court holds that cattle and horses purchased outside the state by residents, and driven into the state for purposes of pasturage, in October of a certain year, are not liable for the taxes of such year, notwithstanding a statute that provides that when any stock is driven into a county, for the purpose of grazing therein, at any time previous to the last day of December of any year, it shall be liable for all taxes leviable in that county for that year, the same as if it had been in the county at the time of the annual assessment. *Board of Commissioners* vs. *Wilson, supra.*

In Wyoming the court held that when property was otherwise legally taxable, under the revenue laws of the state, it would not be exempt from such taxation, in the absence of a statute, because it had been returned for assessment and taxation for the same year in another state. *Kelley* vs. *Rhoads,* 51 Pac. 593.

And the Kansas court held the same in a similar case, and in the same case held that a non-resident's cattle, kept in that state from February tenth until the latter part of July, were taxable in the county where kept. *Hudson* vs. *Miller, supra.*

The other side of the case is presented in the following decisions:

Colorado held that as the constitution impliedly required equality in the burden of taxation, a statute applying to certain classes of animals was invalid, and taxes could not be assessed under it against sheep driven into the state in July for a few months' grazing. *Carbon County Sheep & Cattle Co.* vs. *Board of Commissioners, supra.*

In Montana the court decided as follows: The taxing powers of the state do not extend beyond the territorial limits of the state, nor to all subjects actually within the confines of the state, and on which the state has the physical power to impose a tax, but are limited to subjects which have acquired a situs within the state for the purpose of taxation. And the same court held that the legislature was authorized to fix a definite date as of which the situs of personal property for taxation was to be determined. *Hayes vs. Smith, supra.*

In a case before the Utah court, an associate justice, in a concurring opinion, says: "If the assessors will follow the law (and if they do not they can be compelled to do so), no one will be taxed for any property unless he is the owner thereof at noon on the first day of January. That is the precise point of time when ownership must exist, in order to tax property to a particular owner. This is true of all property except such as is obtained upon consignment or such as has escaped taxation, which must be assessed as provided by the statute."

"Upon the other hand, if any person acquires property of any value after the first day of January he cannot be legally taxed on that property for the current year." *Stillman* vs. *Lynch,* 192 Pac. 272, 281.

The foregoing discussion of statutory provisions and court decisions, concerning the various methods of taxing migratory live stock, will show a lack of uniformity in tax procedure which must of necessity bring injustice to the taxpayer and in many cases cause him unnecessary difficulty and delay in adjusting his tax problems in the various counties or states through which his live stock may have been driven. Any plan which is proposed to remedy this situation should take into consideration not only the

problem of administering the migratory live stock tax, from the standpoint of the tax-gatherer, but also from the standpoint of the taxpayer. It should likewise consider the fact that the public domain should be used to best advantage by all concerned owners, and that to get such an advantage it is necessary to see that no unreasonable tax barriers be raised along the county or state boundaries. There should be no penalty placed upon any citizen of the United States who grazes his live stock in two or more states during a calendar year, but he should be given every opportunity and privilege that any other livestock owner may have on the public domain, in any of the states in which he grazes his live stock.

The grazing fee which has been imposed by some states upon the live stock owned by non-residents who bring their live stock into these states is unjust and uncalled for. The practice of granting a credit, proportionate to the time that the live stock are out of the state is fair and reasonable, provided that the states do not use the provision of the Utah law, to the effect that no credit in excess of fifty per cent of the tax shall be allowed for time spent outside the state, irrespective of the duration of that time. This provision is unfortunate, for it sometimes forces excessive taxation upon the owner of migratory live stock.

Recommendations

In view of these findings your committee has attempted to determine upon certain methods of procedure, which should be incorporated in the migratory live stock tax law of each state affected by this problem. Your committee has decided to recommend general principles, rather than a definite act, because the constitutions and the statutes now in effect in these states contain such varying basic methods of assessment and collection of taxes that it was deemed unwise to attempt to formulate a statute which would fit into the legal code of all of the states thus affected. These recommendations are not intended to include all the requirements of a statute governing this problem, but merely to cover the important points at issue, and they are presented in terms as general as the requirements of the report will permit, in order that each state may have full freedom in adapting these ideas to its own code of laws.

Your committee, therefore, recommends that the statutes of each state, where this problem exists, be so amended as to contain the following:

1. Definition.—For the purpose of taxation, migratory live stock shall be deemed to be: All live stock brought into the state by any person or persons, for the purpose of being grazed or fed for any length of time; all live stock which is driven or removed from one county to another, or from one state to any other state, for the purpose of being grazed or fed for any length of time.

2. All persons responsible for the removal of migratory live stock from one county to another county or from one state to another state should be required to file a certificate with the county assessor of the county into which the live stock are brought, which certificate should state the date when the live stock were brought into the county, the number, the kind and brands of the live stock so removed, together with a statement as to where the live stock have been assessed, if at all.

3. In cases where live stock have been assessed in one state and taxes have been paid upon such assessment, and the live stock have later been removed to another state, the state wherein the live stock were originally assessed should provide for repayment of the taxes which were originally collected, in an amount which is proportionate to the length of time the live stock were out of the state where they were originally assessed.

4. In cases where live stock have been brought from one state to another state, without being assessed in the first state, the assessor of the county into which the live stock have been brought should enter the assessment of such live stock on the assessment rolls of his county and should issue a certificate of assessment to the owner of such live stock, which certificate should set forth the name and address of the owner, the number, kind and brands of the live stock. The statement should also show whether the owner has given bonds to secure payment of the taxes; whether he has paid taxes, or whether the collection of the taxes is secured by a lien upon real property.

5. In case the live stock so removed have already been assessed in the home state, they should be assessed, as stated above, in the county into which they have been removed, but the county treasurer of such county should be required to allow a credit against the taxes due, in an amount which is proportionate to the time that the live stock spent in the home state.

6. In case live stock are moved to another county within the state in which they were originally assessed, the owner of such live stock should present to the assessor of the county or counties into which the live stock are moved, the certificate of assessment which was issued to him by the assessor in the county where the live stock were originally assessed, together with a statement setting forth the length of time which it is contemplated that the live stock shall remain in the county. Upon receipt of such certificate the assessor should note the information contained therein, and should return the certificate to the owner of the live stock. At the close of the year the assessors in the counties through which the live stock ranged should make claim upon the county in which the live stock was originally assessed, for a portion of the taxes due such county or counties, based upon the time which said live stock spent in such county or counties.

Every state should enact a reciprocity clause, which should grant all rights and privileges, concerning the taxation of live stock, to non-resident owners, which are enjoyed by resident owners, provided the states of such non-resident owners grant the same rights and privileges.

In this report the terms "transient live stock" and "migratory live stock" have been used interchangeably. In some states the former is the statutory wording, while in others the latter is used. The general definition, however, covers both terms, wherever used.

WILLIAM BAILEY, *Chairman,*
Chairman, State Board of Equalization of Utah

CLAUDE L. DRAPER,
State Board of Equalization of Wyoming

JOHN EDGERTON,
State Board of Equalization of Montana

G. C. HANNA,
County Assessor, Chaves County, New Mexico

CHARLES R. HOWE,
State Tax Commission of Arizona

M. D. LACK,
State Board of Equalization of California

W. N. MCGILL,
Nevada Tax Commission

T. W. MONELL,
Stock Growers Association of Colorado

JOHN D. ROBERTSON,
Tax Agent, State of Idaho

T. A. BEAL, *Secretary,*
University of Utah.

CHAIRMAN LESER: Gentlemen, we are greatly complimented, and all the older ones of us are greatly pleased to know that Mr. Haugen is back with us. When I thought of this brilliant idea Mr. Haugen was in the room, but we shall have a chance to hear from him. He is one of the old stand-bys, and when I was described this morning as the veteran, one of the veterans — perhaps I am in length of service—I recall that at a little meeting in Salt Lake City we both addressed the rotary club and I reminded them that Mr. Haugen was a good deal of a veteran. I thought I was a good deal of a youngster because he had at that time served twenty years in the business and I had only served nineteen years and eight months, but since that time he has had a little hiatus, although he has come back into the service, and this is what I think is worth reminding you of. We have had here the instances now of the

State of Washington and the State of Utah and the State of Michigan availing themselves of expert advice in dealing with this question of tax reform, and we have also the instance of the State of Montana, showing sense enough, when they found that a man like Nils Haugen had left the service in his own state after twenty years—they had the sense to invite him to come to that state and become their tax adviser, and I think a man who is invited by another state to do that thing—and is doing that thing—is worth hearing, and I hope before the conference is over you will hear him.

I find, like Finnegan — "on again, off again, Finnegan" — Mr. Haugen is with us again, and we want to hear a few words from him. This is the man who was imported into Montana from Wisconsin and who is doing the trick, and we want to hear a little about it, Mr. Haugen.

Nils P. Haugen of Wisconsin: Mr. Chairman and gentlemen of the conference: I don't know whether I am doing the trick or not. There are too many tricks in this game to be able to take them all. I was getting too old for Wisconsin, so I was dropped off the roll in Wisconsin and received an invitation to come out to Montana to assist the board of equalization of that state. I have been trying to be of some assistance. How effective that assistance may be, I cannot yet say, because I find that an elective board hesitates very much about meeting the issue as I think it ought to be met, and still I think that on the whole I may have been of some assistance to them. Mr. Walker, the state treasurer of Montana, is here, a member of this conference, and he is a member of the board of equalization. Montana like some of the other western states has a constitution that ties the hands of the legislature in such a manner that they cannot have probably a very effective system of taxation until they amend their constitution.

In the first place, when Montana was organized as a state, the mining interests along the main range of the Rockies had about all the population they had in the cities, and the population of Montana was largely in the mining districts. There is no question but that the constitution of Montana has tied up the legislature in such a way that until an amendment to the constituion is adopted, the mining properties cannot be assessed except the land itself, at the price the government received for the land. Then the constitution provides that there may be a net proceeds tax levied on the mineral product. They are doing that now and getting some revenue. They have gone quite extensively into the license fee system of taxation, because the constitution has tied them in other respects, so that certain classes of property can be reached in no other manner. The oil products tax, and coal products tax are examples of a severance tax. There is a dealers' tax connected with it too,

but not if the severance tax has been paid on the oil. Of course, that is a new industry in Montana, and it promises great developments in certain parts of the state. The thought I was trying to carry out with the board was that there has been no equalization between counties or between the general property of the state, so-called, and the railroad properties.

I don't approve of the way the railroad assessment is made, but that too is provided for in the constitution, the constitution providing that the state board of equalization shall find the value of railroads, and that the valuation shall be distributed down to the different counties, towns, townships and cities and school districts in proportion to miles of railway laid in each such municipal organization.

CAPTAIN W. P. WHITE: Main line?

MR. HAUGEN: It says miles of railway laid. I don't think the board has followed the letter of the constitution in that respect, and they have discriminated between the main line and the branches, which is hardly justifiable, it seems to me, under that language of the law; but that has been the custom, and it may be this year.

There is another difficulty in Montana—I might find some things to approve of there, but I am there partly for the purpose of criticizing—if I mistake any of those, Mr. Walker, I wish you would correct me—but school districts are organized in Montana for the purpose of reaching some large public utility. Counties are so organized. There is a county organized through which runs the Northern Pacific and the Chicago, Milwaukee and St. Paul roads. Those two railroads pay ninety-two per cent of all the taxes levied in the county. The school districts are organized for the purpose of getting at the railroad property and some other property up in the northwestern corner of the state. In Lincoln county, I think it is, there is a school district with seven pupils. I think that is a district where they have built a teacherage, a dwelling for the teacher, and it has two teachers and a janitor at seventy-five dollars a month, and the Great Northern Railway Company pays nearly all the taxes.

The Montana Power company, one of the largest hydro-electric companies in the country, if not the largest, has necessarily had to build heavy structures, large dams along the river. They have four of them which I have visited and there little communities have built up school districts. That company pays all the taxes for the entire community. There is probably a little justification. It is not quite as bad as it looks, because they are down in a hole between the mountains. There is no settler within miles of them, and there is a little community, just enough men to run the plant of the company, but the company pays all the tax. The distribution of the tax ought to be, I think, on a different basis.

The tax levy in Montana for state tax purposes is limited to three and one-half mills. It used to be two mills; now it is three and one-half, and it is not sufficient to meet all state expenses. They have bonded the state to some extent — five million dollars, and the interest on bonds and indebtedness is growing, and the state tax levy is not keeping up with the running expenses of the government, to meet the interest payments. They are somewhat in the same condition that they are down in Ohio under the Smith law, with which I think a number of you are familiar. That is the situation out there now.

They have a constitutional amendment pending, to be voted on at the special election in December, authorizing the appointment of a tax commission—they called it the state board of equalization but it is practically a tax commission—with the same duties that tax commissions generally possess; and it looks as though that would be endorsed by the people at their special election, so that the present state board of equalization, the members of which are elected for other purposes, will be relieved of the duty now imposed upon them.

I will say that I have found it rather difficult to work with a board of that kind. It is not like sitting down with two other men and going over the returns of railroads and making the state assessment of counties and coming to a conclusion. I have been able to get them together a few times, but they have dispersed without taking action too many times.

I am glad to meet with you again. I want to say that the report that went out last year that I was sick and died was not exactly true. I was not quite well, and I went back to Wisconsin, and in the salubrious climate of Wisconsin I picked up immediately, and this year I have spent out in Montana, and I have taken care of myself in that altitude better than I used to do here, and I am glad to be here again.

CHAIRMAN LESER: I am sure we are glad the report of Mr. Haugen's death was exaggerated. We now adjourn to two o'clock this afternoon.

(Adjournment)

THIRD SESSION

Tuesday Afternoon, September 19

Chairman Lord: We are now a half-hour over the assembling time, and I think perhaps we had better get to work. The secretary has a couple of announcements to make.

(Secretary makes announcements)

Chairman Lord: For more than a century the United States and the Dominion of Canada have presented an object lesson to the world showing how two great people may get along peacefully side by side and live as good neighbors should, and it is a very gratifying thing indeed to be able to say that five of the great provinces of Canada are represented at this meeting. The oldest, or one of the oldest provinces in Canada represented here is the Province of Ontario, and it is not only one of the oldest but is also the most thickly populated province in the Dominion, and I have the pleasure of requesting Mr. J. T. White, the solicitor to the treasury of Ontario, to preside at the meeting this afternoon—Mr. White.

(J. T. White presiding as temporary chairman)

Chairman White: Mr. President and gentlemen, I am very thankful for the courtesy shown me and the Canadian delegates this afternoon in offering me the chair at this meeting. For the benefit of those who do not know where the Province of Ontario is, I will explain that it lies along that boundary to which the president just referred, which stands as a monument to the peace-loving inclination of the Anglo-Saxon race. That boundary extends between the United States of America, the greatest republic the world has ever seen, and that commonwealth of nations known as the British Empire, and the Province of Ontario occupies no mean part of that boundary. We extend from the New England states on the east to the State of Minnesota on the west; and I want to say further as regards the courtesy shown Canada at this meeting, that your courtesy extends not only in matters of this kind, but I have found it extended to monetary matters.

For some four years past, in coming over here to attend your conventions, I found that my hundred or two hundred dollars I

started with was worth probably ninety, or one hundred and eighty. Your American dollar has very kindly come down, considering the weakened condition of the Canadian dollar, owing to our tremendous war exertion. When we started to convalesce and started creeping up again to parity with the American dollar, we found the American dollar came down and met us half way, and that is the reason we are par again.

Now, gentlemen, before Judge Hough starts asking me any more embarrassing questions, as he did last night, I want to remind you of a little story about a Scotch boy. The judge was questioning him regarding a charge against his father of fighting in public. He said, "now Donald, just tell us all you know about this fight." So Donald said, "well, Judge, you ken Aberdeen Street?" "Yes, lad, I know Aberdeen Street very well." "You ken as you go along Aberdeen Street and get to High Street that McDonald's saloon is on the corner?" "I ken me McDonald's place very well." "You ken you then go up High Street until you come to the old pump?" "I know the pump very well, Donald." Said Donald, "Judge, you ken to pump that, because you can no pump me." Therefore, I am going to leave the program to the gentlemen on it this afternoon, and I am calling on Professor MacGibbon, University of Alberta, to read a paper which he has prepared for this meeting.

RECENT ATTEMPTS OF ALBERTA CITIES TO SECURE A WIDER TAXATION BASE

D. A. MACGIBBON
University of Alberta

Professor Haig's report in 1915 and Professor A. B. Clark's in 1920 upon taxation in Western Canada make it unnecessary to sketch in the background, except in the barest outline. There are six cities within the province, but two of these are scarcely good-sized towns. Each city operates under its individual charter. There is no general cities act. In the main, however, no marked differences appear between the individual development and the problems of these cities. In fact, this has become so clearly recognized that I understand a general cities act is being prepared for submission to the next session of the legislature.

Certain general considerations must first be noted as they throw light upon the present situation. First, the federal government's extensive recourse to direct taxation has greatly narrowed the field open to the provincial governments. This has made the latter unwilling to grant wide taxing powers to the cities for fear that grants of power might be in the way of the legislature's own schemes of taxation.

In the second place the last few years have not been years of growth and progress but years of retrenchment and depression. Population has either stood still or increased very slowly. The roaring boom of pre-war days has given place to post-war lassitude. Land values have fallen greatly; and high costs have discouraged building activity.

Finally, the situation was markedly aggravated, not only by the after effects of wild speculation, but also by the general swing to a narrowed basis for taxation. As is well known, this movement was closely connected with the theory of the single tax upon land values.

In 1915 it was still possible to study Alberta cities as examples of the trend towards single tax. But in 1920 a minister of the Crown for the province could refer without political annihilation to single tax as the "curse of Alberta." Further a special report on assessment and taxation prepared last year and signed by the mayor and city commissioner of Edmonton dubbed "the single tax, a complete failure" and pointed out that—"the nearer a city (in Western Canada) went towards the adoption of the single tax, the greater is its financial difficulties today, and its arrears of taxes are proportionately higher than in other cities." In 1915, 88% of the total revenue of Edmonton was derived from land; in 1921, 54%—while 16% came from a tax on buildings assessed at 60% of their value. Alluding to these figures the city commissioners in their annual report observed "the sooner the difference between these limits is lessened the better it will be for the city's financial position." The change has been more marked in Edmonton than in Calgary, which never went so far in the direction of single tax. There the single tax idea reached its turning point in 1915. In Lethbridge the turn came in 1917. Substantially the swing away has been sharp and is general to all the cities of the province.

The circumstances under which such a thorough-going reversal of policy has taken place are as follows: real estate speculation led to the continual addition of new subdivisions to the areas of the various cities and increased their extent to practically double that actually required by business and population. Moreover, attempts, made with more or less success, by interested speculators to especially develop certain portions of each city led to a very scattered and irregular growth of the communities as a whole. The inevitable results followed: heavy charges for streets, sidewalks and public utilities; city debts increased very rapidly; city utilities became more expensive to operate; a comparatively large revenue became necessary.

But as the boom flattened out, tax collections became very difficult. Arrears mounted up. Cities were forced to acquire a great deal of land in lieu of taxes, for the land in many instances was

not worth as much as the taxes that had accrued against it. For instance, up to and including the 1920 tax sale the city of Edmonton bought in property assessed at $8,709,937, upon which tax arrears amounted to $3,961,291. Eventually the city was expected to recoup itself, but in the meantime city lots were a drug on the market and the city treasury went bare.

Under these circumstances it became quite obvious that a wider basis of taxation must be obtained. With the disappearance of the assessed value of land it was necessary to look for other sources of revenue.

Concurrently with the search for other sources of revenue a movement to change the conditions and reduce the valuations upon which land was taxed occurred. As it is being worked out in Edmonton the plan has been to classify land as suburban and intra-urban. The suburban classification includes nearly 12,000 acres. "The owners of property within this classification, provided the same is not subdivided, may apply to the public utilities commission for a reduction in the amount of the assessment and the board may direct that such property shall be assessed upon a certain basis and that such land be taxed at a lesser rate than adopted generally throughout the city." Applications covering 1200 acres have been approved to date. The new assessed value of the land varies from $100 to $150 per acre according to its agricultural value, and from $10 to $20 per acre for land included in ravines. The rate of taxation on suburban land has been placed at twenty mills, or about one-half the current city rate. It has not been considered feasible to reduce the city's limits, as the city is the owner of a large block of land within the suburban area, upon which, if it were excluded from the area of the city, taxes would have to be paid to the adjoining municipality.

The valuation of intra-urban property has also been lowered. In all, the reduction in the assessment from 1913 to 1921 in Edmonton has been from $188 m. to $61 m., or a reduction of 67%. It is conceded that it is still far higher than it should be. The reduction in the assessed value of land is not particular to Edmonton, but is common to all Alberta cities. In 1917 the total municipal assessment for the six cities was $226 m.; by 1921 this had been reduced to $129 m., a reduction of approximately 43% in five years. This phase of the movement may be briefly summarized as an attempt to assess land at its actual going value and to levy a tax theron that will actually be paid. The mill rate, however, continues to be considered very high, the average for the four larger cities being 40.5 mills, varying from 34 mills for Medicine Hat to 46.975 mills for Calgary (1921). The land owner is still bearing a very heavy share of the burden of taxation, and the opinion is expressed that "the tenant occupant is getting off very lightly."

In Edmonton the first attempt to widen the city's basis of taxation came in 1917 when the city council obtained an amendment to its charter, by which it was authorized, subject to ratification by plebiscite: (a) "to levy a tax on buildings and improvements assessed at not more than 25% of their value; (b) to levy a business tax not exceeding 6% of a business assessment, equal to the full annual rental of the premises occupied." The proposal to tax buildings and improvements failed to carry, but the proposed business tax was ratified. In 1918, however, another charter amendment fixed the assessment of buildings and improvements at 60% of their actual value. These had been exempt since 1904. The business tax was also made a graduated tax from 6% to 25% of an assessment of the full rental value, according to the nature of the business.

The city of Calgary, as already noted, had never gone quite as far as Edmonton into single tax, but by 1912 the assessment on buildings had been reduced to 25% of their value. This was the lowest point touched. In 1915, power was obtained for the assessment of special franchises on the full value of all buildings, improvements, plants, equipment and apparatus used in their operation at 60% of the actual value. This amendment really touched only two large private corporations operating in the city, the gas company and Calgary water power company.

In the same year a modern business tax on a rental basis was devised to replace a personal property tax. In 1919 the assessment on buildings and improvements on the land was brought up to 50%, where it now stands.

In Lethbridge in 1917 the assessed value of improvements was increased from one-third to one-half, with a reduction on the assessed value of outlying and unimproved property.

At the present time all the cities of Alberta assess buildings and improvements.

Lethbridge has also endeavored to expand its revenue by an increase in the poll tax from $3 to $10, this being applicable to all inhabitants of the city of the age of 21 and not assessed on the assessment roll; and by replacing an assessment on personal property, with a rental and floor space tax, really a business tax.

Medicine Hat has not adopted the business tax based on the floor space, but levies a rental tax. In the case of all premises occupied for dwelling house purposes a charge is made of 10% of the rental value and collected monthly, along with charges for gas, water and electric light. If not paid the city has the power of shutting off the gas and water as in the case of utility bills not paid. It is not surprising that under these conditions city officials report that the tax is practically 100% collectible.

In 1918 amendments to their charters were sought and secured

by Calgary and Edmonton to enable an income tax to be levied. The right was limited, however, to two years, and in view of this Calgary did not avail itself of its power. The Edmonton tax was progressive, rising from 1% on the first $1000 of taxable incomes to 8% on all taxable incomes over $10,000. The exemption for unmarried persons, widows or widowers without dependent children is $1000, for all other persons $1500. There was exemption also of income derived from land and building within the city, and under certain conditions the income tax might be set off against the real property tax. Despite these provisions, which obviously limited its yield, this tax gave a fair return, but in 1921 the provincial government declined to continue the privilege. It was intimated that the provincial government was considering a provincial income tax. In lieu of the income tax, however, the cities of Calgary and Edmonton were given permission to levy the so-called service or community tax.

In Edmonton the service tax was given a trial in the year 1921. It provided for a levy of from $5 to $25 upon every person, male or female, of the age of 21 years, or over, but gave the city council the right to differentiate between the amounts payable by different classes of persons. The council, by by-law, ordained that persons living in their own home, whose total assessment value was not over $3000, should pay the minimum rate, otherwise the assessment should be graduated according to the person's income. The maximum levy of $25 was reached at the $3000 income class. This measure aroused the greatest antagonism, was successfully evaded, and in every instance was difficult to collect. The tax was expected to yield $200,000. The actual yield was $85,000. Although the charter was amended to increase the maximum levy to $100 and to allow for payments to be set off against tax payment on land or business assessment, the service tax was dropped for the present year in Edmonton. It is not likely to be employed again, or at least not until the feeling aroused by the original service tax has to some degree died down. Calgary, however, has adopted it, but reports are not yet available as to its success.

To sum up, in the main, the cities of Alberta rely upon the taxation of land, improvements, and upon the business tax. The business tax, rental tax, service and poll tax, all represent efforts to lift part of the burden of taxation from the owner of land, and place it upon the tenant occupier or citizen who is not a land owner. As a matter of actual experience the land owner has found himself unable to shift the tax. One civic official reports "there is a general feeling that the ordinary tenant is getting off lightly, and is enjoying fire and police protection, use of streets, parks, and other advantages, for which at one time only the property owner was paying, the rentals in this city being so moderate

that the property owner gets very little return for his investment, and in some cases nothing at all." In connection with the rental tax it is pointed out that "during the fall and winter months, people flock into the city from the rural districts with their families, and take advantage of the good schools there, for which they pay nothing, and the rental tax is the only means of getting some contribution from such people towards the upkeep of the city institutions. A court of revision is held each year, as in the case of land assessments, when testimony is heard as to houses being assessed too high or too low a rental value, and adjustments made according to the merits of the case. There was considerable objection to this tax when first imposed, but many of the objectors now favor it."

The cities of Alberta are still looking for an additional source of income. To quote the last report of the department of municipal affairs: "It is quite evident, although the cities have been changing their charters under legislative enactment for many years, that they are not yet on a solid and permanent basis for the levy of taxes and the production of the proper income."

The cities feel keenly that the provincial government should forego part of the receipts it receives from the amusement tax and the automobile tax. Further, they have urged strongly their right to employ the income tax, but that depends on whether the provincial government will forego this resource. At the present time this seems to be unlikely, for the province is encountering similar difficulty in supplying itself with adequate revenues. It is possible that it may consent to give a share of the proceeds of the proposed income tax to the cities. This is still, however, on the lap of the gods. The prospects are that the cities will have to seek elsewhere for an adequately widened basis of taxation.

CHAIRMAN WHITE: I believe Mr. J. J. Smith, minister of local affairs for Saskatchewan, is not with us. Will the gentlemen from Saskatchewan advise me whether he has sent a paper to be read?

DELEGATE: Mr. Chairman, Mr. Smith is not at present with us, and as far as I know he has not sent in a paper to be read.

CHAIRMAN WHITE: If one of the gentlemen from Saskatchewan would care to make a few remarks regarding recent tax legislation in Saskatchewan or any other province, I think the meeting would be glad to hear him.

E. G. HINGLEY: Mr. Chairman, I am here as a visitor myself. I have not prepared anything at all to place before the meeting and I did not expect to be called upon, so I think it would be only imposing upon the meeting to give anything at the present time. I am sorry Mr. Smith was detained by ill health. He intended to come, but at the last moment he found he could not get away.

CHAIRMAN WHITE: I will now call upon Mr. L. W. Donley, chairman of the Manitoba tax commission, to read the paper prepared by Professor Clark.

L. W. DONLEY, chairman of the Manitoba tax commission: Mr. Chairman and ladies and gentlemen of the congress: I am here today to read a paper prepared by Professor Clark of Manitoba University, who I regret is unable to be here, on account of this being the opening day of the University, and Professor Clark found that he would have to stay home. However, I take pleasure in presenting the paper that the Professor has prepared in regard to some of the tax reforms which have taken place in the Province of Manitoba.

THE TAX REFORM MOVEMENT IN MANITOBA

ARCH B. CLARK
Professor of Political Economy, University of Manitoba

There has for some years been a pronounced movement of opinion in the urban centers of Manitoba in favor of broadening the basis of municipal taxation, and in particular in favor of the recognition of the income tax principle.

It is true that in the Manitoba cities and towns, where improvements have been taxed on a percentage up to two-thirds of their value, the need of a wider tax base has never been so acutely felt as in the cities of the provinces of the west, where the policy, at one time popular, of exempting improvements and concentrating taxation on the unimproved value of land has greatly aggravated the financial difficulties of the municipalities, arising from the collapse of real estate values.

But even in Manitoba the steady growth in number and expensiveness of the general services for the performance of which the municipal authority is held responsible has undoubtedly furnished a strong argument for recognizing more fully in municipal taxation the principle of faculty or ability to pay.

The efforts of the reformers, moreover, now give fair promise of bearing fruit, albeit of a variety certainly somewhat different from that at first contemplated. The original demand was for some form of *municipal* taxation of income; the outcome seems likely to be a *provincial* income tax for provincial revenue purposes.

The difference between the early dream and the present promise, though as we shall see greater in form than in substance, is yet, it will be admitted, material. The explanation of this change in the outlook, however, at once becomes apparent if we take a retrospective glance at the historical development of the movement—a glance which at the same time incidentally reveals very marked progress in public appreciation alike of the fundamental principles

of taxation and of the difficulties involved in their practical application.

The Movement for a City Income Tax

It is now almost six years since the Winnipeg city council — in consequence of persistent complaints of the unequal incidence of the existing business tax, based on rental value, and of the growing burden of the real property tax—instructed the board of valuation and revision to conduct a public inquiry into the methods of assessment and taxation.

The outcome of that inquiry was a report recommending the substitution for the rental value business tax of an "income tax" on all incomes originating within the city. The declared object was to broaden the basis of civic revenue and thus bring about a more equitable distribution of the burden of municipal taxation, which was held to be concentrated to a dangerous extent on the owners of real property.

But on further discussion it became clear that, however desirable the end in view, that end was unlikely to be attained by the proposed tax. (1) In the first place, it was objected that as the basis of income under modern conditions is not local, a city income tax standing alone could give little promise of proving in operation either equitable or productive. (2) It was further maintained that in any case the proposed tax, being confined to that part of income arising within the city, was not a true income tax, since it had no necessary relation to *ability to pay*. (3) Finally, it was pointed out that the introduction of an income tax, based as it must be on ability to pay, would in no way justify the abolition of the municipal business tax, the economic basis of which is *benefit received*.

Onerous and Beneficial Taxes

That the discussion had been distinctly educative became apparent when, early in 1918, the city council by resolution recognized the essential distinction between municipal expenditure on specifically *local* services on the one hand, and on those of a *general*, provincial or national character on the other. The fact that no hard-and-fast line of division can be drawn between the two classes of services does not render the distinction less real and important.

From expenditure on services preponderantly local in character the owners of real property, and those engaged in business in the locality, may be held to derive, not certainly the exclusive benefit but yet a direct and special benefit more or less commensurate with the tax burden such expenditure entails. Services of this class may properly therefore be provided for by taxes based on *benefit received*, such as the real property tax and the business tax.

But the same cannot be said of expenditure on the more general

or national services, such as education, care of public health, and administration of justice. The expense of such services can only be met by taxation, which must be to a considerable extent *onerous* rather than beneficial to the local taxpayer; and regard for sound financial principles requires that such taxation should be levied on the basis of ability to pay. The city council accordingly submitted to the provincial government a request that it should be granted power to provide by means of an income tax for the maintenance of the more general or provincial services for which it is held responsible.

The Assessment and Taxation Commission

As the provincial government realized that the problem was not peculiar to Winnipeg, the city's request in turn led to the appointment of the Manitoba assessment and taxation commission, which, after an exhaustive inquiry covering the whole field of provincial and municipal taxation, reported in December, 1919. Amongst the changes recommended in the report were:

(1) The introduction of an income tax in the urban municipalities of the province and in those portions of the rural municipalities having urban characteristics;

(2) The substitution of a business tax, based on the net profits of business, for the existing municipal business tax based on rental value, or for the personal property tax where that still survived;

(3) The institution of a provincial tax commission, amongst the duties of which would be the administration of the income tax and the reformed business tax.

The Manitoba tax commission has been in existence for nearly two and a half years, but up to the present it has been chiefly engaged in securing a uniform method of municipal assessments, in accordance with the law, preparing the equalized assessments required for the purpose of the provincial government's levy, and making assessments and tax collections in the unorganized districts of Manitoba. The municipal business and personal property taxes still stand unreformed, and no income tax law has yet been placed on the statute book of the province.

The Winnipeg city council, it is true, has from time to time brought before the legislature a bill providing for a city income tax. But the outcome has been merely to stimulate the provincial government and legislature to action on the lines of the assessment and taxation commission report of 1919.

In response to this pressure the government at the 1921 session of the legislature introduced a bill providing for an income tax for municipal purposes in urban communities only, as recommended

in the report already mentioned. The revenue from this tax, less cost of administration, was to go to the municipality within which it was raised, and there was thus clearly no motive for extending the operation of the tax to purely farming communities. The bill, however, after being mercilessly tossed on the horns of "*capital*" and "*labor*"—the former contending for a very slowly progressive rate and a very low exemption limit, and the latter for a highly progressive rate and a high exemption limit supplemented by lavish abatements—emerged from the committee stage so mutilated as to be obviously useless as an instrument of local revenue, and was accordingly withdrawn.

The Income Tax Unsuitable as a Source of Local Revenue

Another and important stage in the educative process was now complete. The discussion in committee had afforded abundant illustration of the weaknesses both in principle and practice inherent in any provincial or state income tax scheme under which the revenue is allocated to the particular municipality within which it is collected, and had served to convince all thoughtful observers that no such scheme is ever likely to be so devised as to meet the diverse financial situations of city, town and village. An exemption limit, for example, which is not too high for the city, destroys all hope of revenue from the tax in the case of the small town or village.

The rate of the income tax must be uniform throughout the province or state; it cannot be adjusted like that of the real property tax to the varied fiscal needs of different municipalities. Nor can the exemption limits be varied to suit the very different costs of living in city, town and village.

It follows that if the policy were adopted of distributing, in whole or in part, the proceeds of the income tax to the different municipalities, in proportion to their respective contributions thereto, the outcome would be obviously undesirable in certain important respects.

(1) In the first place, some municipalities must under such a system receive less than they need and could in the general interest spend, while others will receive more than they require, the consequence being straitened financial conditions in some municipalities and a strong temptation to wasteful extravagance in others. The reality of this danger is, I believe, now admitted to have been shown by practical experience in the State of Wisconsin, where such a system has been in operation for a decade. A striking illustration of its working there is found in the experience of the town of Plover in Portage County, as cited in the "Bulletin of the National Tax Association" for January, 1922. Plover, we are there told, had no property tax whatever for state, county and

town purposes in the years 1921-22, owing to the town's share of the income tax paid by certain paper mill companies being more than sufficient to cover all local expenses.

(2) There is a further danger under such a system. The income tax is to be regarded as essentially an *onerous* tax (i. e. burdensome as regards the individual taxpayer) levied on the basis of faculty or ability to pay, and thus eminently suited to be the instrument of revenue for the maintenance of general services in the interest of the community as a whole. But if the revenue so secured is handed over to the municipalities, or shared with them, it may *not* be spent, as its origin would dictate and as it rightly should, on the maintenance or improvement of these general services. It may on the contrary, under the pressure of powerful organized interests, easily be spent on specifically local services which confer a measurable benefit on the local taxpayers and which can, on the *benefit* basis, be legitimately provided for by the taxation of real property and business, especially when we bear in mind the vital distinction between the immediate impact and the ultimate real incidence of these taxes.

In brief, it is now apparent that any real relief of the financial strain on the municipalities, and of the growing burden of taxation on the owners of real property, must be looked for neither in a city or municipal income tax, nor in a provincial income tax for municipal purposes. The true path of reform clearly lies in the adoption of a provincial income tax for provincial revenue purposes, the provincial government at the same time assuming responsibility for a corresponding proportion of the expense of the general services, more especially *education,* of the growing burden of which the municipalities now reasonably complain.

Chairman White: I understand that Mr. Leason, Surveyor of Taxes of British Columbia, is at the conference, and if there is any information he desires to impart to the conference, of tax conditions in British Columbia, we should be glad to give him a few moments.

E. E. Leason, of British Columbia: Mr. Chairman and gentlemen, I find myself in rather an unique position today. I had only about two hours' notice to come and attend this convention. My minister, Honorable John Hart, had anticipated being here, and I understand he was quite fortified with a lot of data which he intended to bring in in an informal way to the convention. He unfortunately was called out of the city and he simply instructed me to come here and learn, and pick up and bring back all the good points for our benefit.

By the samples that have been handed out here during the

morning. I am satisfied that I shall derive a great deal of profit and pleasure from being present.

In regard to the tax situation in British Columbia, I find we are in a position similar to that which has been stated by a number of speakers here. I might say, that apparently from what I hear here, you seem to have a great many more sources of revenue than we have in British Columbia. We are looking for more. British Columbia is divided into thirty assessment districts and an assessor appointed from each. We have an alternative tax with the personal property. What I mean by that is, from the return made by the taxpayer, the assessor determines as to whether he will assess on personal property or income. The meaning in terms of taxes is, we simply take that which produces the greater revenue. I might state that there is considerable opposition to the personal property tax, and as a civil servant probably I had better not express my opinion on that. Suffice it to say that the taxpayer claims, and in many cases rightly so, that he is taxed on his losses, because in the Province of British Columbia, I am sorry to say, for the past two years, the returns of the taxpayers on income have not been such as would warrant our taxing them on it; consequently we have to tax them on personal property, which is really a merchandise tax. The result is that sometimes they are taxed on losses.

We also have an amusement tax, and recently we have inaugurated what is called a pari-mutual tax. We have just experimented on that, and over in Vancouver it resulted in the collection of one hundred and ninety-two thousand dollars and twelve thousand dollars amusement tax. The latter goes to the provincial government; the one hundred and ninety thousand dollars is distributed pro rata among the municipalities, which also receive one-third of the license on automobiles. Personal property tax on automobiles has been obliterated. And they also receive a very large portion of what is sometimes termed in the State of Washington a wet tax, liquid tax. You know there is sold a certain product from the corn juice of Iowa. The municipalities benefit from that to a large extent. What I hope to learn here is how you dispose of personal property. From conversations with some of your members it seems to me I am at a little difficulty to find where your real property, or rather what is classified as real property, ceases and personal property begins. I find in a great many cases that which is termed real property in our province is looked upon as personal property here, for the simple reason of getting additional revenue.

SECRETARY HOLCOMB: What is an example of that; can you remember any.

E. E. LEASON: Well, an example is machinery, not fixtures. I

have reference to certain factories in West Allis. They informed me that they were taxed as real property. We would classify it as personal property, not being affixed to the land, or by cement foundations.

Secretary Holcomb: Of course, we have some machinery that is real and some personal, depending upon the character. I presume you refer to how it is attached. That is one test, but we have various tests. If it is a leased building, it might be called personal, and if in an owned building, it might be called real.

Mr. Leason: We cannot see the differences for purposes of taxation. We don't recognize a difference for the purpose of taxation. The fact of ownership or possession is sufficient for taxation purposes. As I say, we are only infants and we are going to learn.

We have recently inaugurated in connection with the income tax what we termed an audit bureau, for the purpose of instructing taxpayers how to make out their returns. We found that in a great many cases they had innocently neglected to properly classify the items of expense and would put down the sum total of all expenses involved in the creation of the particular income on which they were being assessed, because it had been an expense, so far as they were concerned, in the production of that income, but not all was permissible as a deduction under the act. The result of that audit bureau was that in the first four months it produced one hundred and eighty-four thousand dollars in excess of the tax that had been levied and paid by those particular firms which had been audited, at an expense of less than twenty-five hundred dollars. So I might state we are still progressing. They have now increased that force to nine men, and we are seeking for additions to the staff because we find it is very productive.

Captain W. P. White: What is the character of the items which are not permissible to be charged as costs?

Mr. Leason: We found that they exceeded on depreciation largely, and also on salaries paid to partners, and in many cases interest and dividends derived by certain companies, where the parent company was not taxed, were omitted; then they claimed exemption from dividends arising from certain stocks, without making any return. Returns up to two years ago were very vague. We also found that the assessors as a rule were not as well versed in going into the corporation books as was necessary in order to get proper returns, and they were to a very large extent at the mercy of experts, who were engaged for the particular purpose of making out returns for taxation purposes and by bringing chartered accountants and certified bookkeepers to go into their books and make a thorough examination, we found in many cases, as I

say, that they had included in their claims for exemptions that which the law did not permit to be exempted.

DELEGATE: What is the schedule of depreciation?

MR. LEASON: That is limited to certain percentages, at the discretion of the minister.

MR. WHITE: Limited to certain percentages?

MR. LEASON: No set rate, but it cannot exceed fifteen per cent.

MR. WHITE: What limitation is there on salaries?

MR. LEASON: Well, they are exempting fifteen hundred dollars and two hundred dollars for each child under the age of eighteen years.

MR. WHITE: That is the individuals, but I mean in your corporation tax.

MR. LEASON: No exemption whatever; flat rate of two per cent on the income, on the receipts, as you might call it, on the volume of business done.

MR. WHITE: But you say certain expenditures were not allowable. That includes salaries?

MR. LEASON: Excessive salaries paid to superintendents and so forth.

MR. WHITE: Were those superintendents members of the corporation or were they employees?

MR. LEASON: They are employees in some cases and in some cases not. When we demanded from them returns, we found they were escaping taxation.

MR. WHITE: The employees were escaping taxation?

MR. LEASON: Yes.

MR. H. B. FERNALD of New York: Wasn't there one provision there that you cannot deduct any salary paid to those who reside outside of the province, who don't pay a tax on those salaries; is that the essence of that provision?

MR. LEASON: Yes, but to a very large extent I don't think that has been in vogue.

One of our great difficulties is to define what a service is worth. I will give you an instance of a concrete case, a partnership of three, and their return showed an assessable income of fifteen thousand dollars. One said my service is worth five thousand, another said mine is worth five thousand, and the third said his was worth five thousand dollars, and each received five thousand, and they said there is nothing to assess, that those are our salaries. But

as a partnership is treated as an individual for the purpose of taxation, they are only permitted to deduct one fifteen hundred dollars.

Question: What per cent of the gross tax does it cost to collect, about what per cent?

Mr. Leason: I haven't those figures at hand. As I say, I only had two hours' notice in leaving, and I did not have an opportunity to bring any data along with me.

Chairman White: Does the province return to the municipalities any share of the income tax?

Mr. Leason: No, sir, they are getting enough now. The municipalities are not agitating for permission from the legislature to inaugurate income taxes. They were given the option last year of levying an amusement tax or personal property tax. In some cases they did take advantage of that, and also the poll tax, but not in many cases.

I should like to express my thanks to the gentlemen and particularly to the officers and reception committee. I arrived here last night and hardly found a place to sleep, but they accommodated me, and I assure you if you come to British Columbia we shall be pleased to reciprocate.

Chairman White: It occurred to me that probably some of the gentlemen here would want to ask the previous speakers a few questions regarding points raised in the papers read. For myself I thought of asking Professor MacGibbon what experience the City of Edmonton has had regarding the large amount of unpaid taxes which I think they found themselves confronted with a few years ago.

Professor MacGibbon: In the last year or so failures have not been large, and at the present time land taken by the city can be sold, free of certain building restrictions and so forth, to customers, and they are endeavoring to sell land as fast as they can to purchasers.

Chairman White: Then the vacant land which the city has taken back for taxes, I presume there is no market for it at present, is that the situation?

Professor MacGibbon: There is apparently a slight market beginning, that is, for some of it, but a large amount of it is simply going back into farm lands on a reduced valuation—suburban lands. Property that is closer in, a certain amount is bought and sold—just beginning.

C. J. Buell of Minnesota: May I ask Professor MacGibbon: How do you pay for your street improvements, your sewers and water mains, your paving, side-walking and all that sort of thing?

PROFESSOR MACGIBBON: By special assessment.

MR. BUELL: Special assessment against the property?

PROFESSOR MACGIBBON: Yes.

MR. BUELL: That is an illustration of the theory of paying according to the benefits received.

PROFESSOR MACGIBBON: I should like to point out in that connection that the general effect of that has led to fifty to seventy per cent of street corners being unplatted. With taxation running on two sides of a lot, you find cities built excepting the corners.

MR. BUELL: You mean to say the assessment on both streets resulted in the corners being unbuilt on?

PROFESSOR MACGIBBON: Yes.

MR. BUELL: Don't they have to pay for the sewers and paving and so on whether they build on the corner or not?

PROFESSOR MACGIBBON: Oh, yes; but the point I tried to make was that a large amount of this property was handled by speculators and that as a result the people avoided buying corner lots.

CHAIRMAN WHITE: I should like to emphasize to the gentlemen asking questions in the future of the different speakers that they give the reporter their names. They are not always known to the chair and the reporter would like to have the names of the gentlemen asking questions.

I might supplement the remarks that have already been made by the speakers on Canadian topics, and give you a few words about the finances of the Province of Ontario. Our financial wants for ordinary expenditure run a little over thirty millions of dollars. We make no direct levy on the municipality, our sources of revenue being just an amount that is refunded to the different provinces from the Dominion Government. That is known as the subsidy which the province receives from the federal government. That amounts to about one-eighth of our total revenue in the province.

We collect also from corporations, banks, railways, trust and loan companies and so on, and from inheritance taxes and motor vehicle licenses, amusement tax and tax on race-track winnings, which we find sufficient for the purposes of the government, and I think in a year or two we are not going to be worried about financial affairs in the province.

I might say for the province of Ontario that the people are in the happy position in many of the localities of really having experienced in the past few years a substantial reduction in taxes. While not directly in taxes, it has the effect of being a reduction in taxes. I am referring to the hydro-electric activities of the provincial government. The province has a hydro-electric commis-

sion which functions throughout the province and covers nearly the entire province. The intention is that eventually it will cover the entire province. That commission provides power to different municipalities, and they in turn provide power, light and heat to the inhabitants of the municipality. The result has been that bills for the small consumer and householder for light, heat and power for domestic purposes have been reduced by about sixty per cent. Where formerly they paid three dollars to the privately owned corporation, they now pay one dollar to the hydro-electric commission, and that price is estimated and is fixed to repay the capital cost within forty years, as well as upkeep and depreciation.

Mr. Buell: May I ask a question in that connection? I saw the last report of your commission and I got from it what appeared to be this inference, that your electric lights throughout the province are costing you somewhere from three to five cents a kilowatt hour. Is that pretty near right?

Chairman White: I am not familiar with the prices.

Mr. Buell: I think the highest rate anywhere was five cents, and the lowest rate was three cents, if I remember rightly, and that heat and power are proportionately cheaper than that.

Chairman White: I am not familiar with the prices. I am speaking roughly, and part of it is from my own experience, from what I paid in my own house. Remember, the price at which the privately owned corporation supplied the power in large blocks to manufacturing enterprises, and so on, would not depreciate to the same extent that the small consumer would be benefitted.

Mr. Buell: Of course with us the matter of price is a matter of very great importance because we are paying ten and eleven cents per kw. hour to private corporations, whereas you are paying three, four and five for the same kind of service.

Ralph W. Smith of California: I want to state for the information of the convention that in California this year we have initiated a measure on the ballot whereby we are contemplating the issue of five hundred millions of dollars in bonds to purchase our public utilities, such as water and light, and follow along in the way that Ontario has led.

Mr. Douglas Sutherland of Illinois: I should like to ask a few questions. First, to what extent was this hydro-electric commission publicly financed in its inception? What was the initial financing?

Chairman White: The commission has authority to issue its own bonds for the purpose of purchasing privately owned corporations. The province in addition to that has authority to issue

provincial bonds for hydro purposes and sell those on the market and hands over the money to the commission, and that was the method used in financing the construction of the Chippewa canal, which was made use of at Niagara Falls. The province has supplied some eighty millions of dollars to the power commission for increased developments of power at Niagara Falls.

MR. SUTHERLAND: That was for initial expense?

CHAIRMAN WHITE: Initial capital expense.

MR. SUTHERLAND: To what extent is the province now appropriating money for the continuance of the work, for operation?

CHAIRMAN WHITE: Just whatever money the commission requires. The provincial government has not seen fit to call a halt to any hydro enterprise, except in the case of the hydro railroad. The commission wished to go on with the construction of hydro railroads, but the matter, after investigation, has been held up and they decided it was not a propitious time to enter upon the hydro railways.

MR. SUTHERLAND: During the last fiscal year, what was the average operating expense for the commission?

CHAIRMAN WHITE: The commission submit to the government their probable expenditure for the year, the amount they will require on capital account. If necessary, the government will issue bonds to supply the commission with money. That is accounted for to the government by the commission. The government pays the commission a sinking fund each year. During the first five years of the operation there is no sinking fund provided. The sinking fund commences five years after the capital expenditure is used.

MR. SUTHERLAND: For the first five years some of the current operating expenses are financed by bond issue proceeds?

CHAIRMAN WHITE: Yes.

MR. BUELL: In reading your report I got the inference that finally the taxpayer would pay nothing, that it would be in no way any burden upon the general taxpayer, that your hydroelectric commission will be able to handle its own affairs in its own way and have a surplus to pay to the government finally, if anything.

CHAIRMAN WHITE: That is quite right. The scheme does not provide for the province paying one cent of the cost of hydro. The price charged to the consumer is sufficient on the estimates of the engineers to cover the capital cost and the cost of producing — carrying it out.

MR. WHITE: Has any taxation been levied upon the general public for the inauguration of this scheme?

CHAIRMAN WHITE: No tax on the general public. The credit of the province has been pledged for the money necessary to carry on the enterprise.

MR. R. R. NICHOL of Winnipeg: I wonder if the conference would care to hear a few words in regard to hydro power in Manitoba. I refer particularly to the City of Winnipeg. I can answer a number of questions which have been raised.

Originally we had electric power from the street railway. We were paying twenty cents per kilowatt hour for light service. The citizens in general began to agitate for the municipal scheme. The railway dropped its rates to twelve cents per kilowatt in the hope of killing the scheme. The fathers of the scheme indicated they could supply power for three cents per kilowatt hour, and one cent per kilowatt hour for domestic use, such as cooking. They originally issued bonds for three millions of dollars, and then subsequently issued one million dollars for further developments. The last inventory showed that the city hydro power scheme to have assets of seven million. The city never paid a dollar nor the taxpayers a dollar toward the power scheme from the inception. The first year or two it lost money. They could not supply the power starting out at three cents for light. There are not, as in the case of Ontario, any surcharges, such as floor space, or meter charges. The rate of three cents per kilowatt hour is subject to ten per cent discount for prompt payment, and the one cent for power for electric stoves is subject to ten per cent discount. The only restriction is a minimum of one dollar on power and fifty cents on light per month. We have found in Manitoba that the power scheme has worked out, as I have stated, with an original expenditure of three millions of dollars and in addition an expenditure of one million, or a total expenditure of four millions. Today our power development plant, together with the money they have spent out of earnings in extending it, is valued at some seven millions of dollars.

MR. PHILIP ZOERCHER of Indiana: Who manages the plant?

MR. NICHOL: The city has a man appointed at the head of it who takes direct charge.

MR. ZOERCHER: How often do you change city administration?

MR. NICHOL: The man who was put into the power plant is still there, but our council is appointed each year.

MR. ZOERCHER: What I am trying to get at is: The way we have it in this country, every time we elect new city officers the management of the city municipal plant is part of the spoils of office.

MR. NICHOL: That does not happen up there in the City of

Winnipeg, in particular, and in other cities in general as well. All municipal officials are run from year to year, and it is simply a question of their service, and they have gone further than that by adopting the policy of advancing those who are coming up with it. We had a recent change there in our power scheme. Our chief engineer went with another company, which is developing a big power scheme at Winnipeg for the sale of power, and the man who was in charge of the plant of the power scheme was put in his place. They have adopted generally all through the cities the system of advancing those next in line.

MR. WHITE: Then there is no franchise tax paid by the municipal corporation for the privilege of using it?

MR. NICHOL: No, there is not.

MR. WHITE: And no tax?

MR. NICHOL: Not upon the municipality.

MR. WHITE: So what they gain in one way they lose in another.

CHAIRMAN WHITE: I must apologize for precipitating this discussion. It is really outside of taxation matters. I did not realize when I started it that I was probably starting something that would be hard to stop.

MR. H. S. VAN ALSTINE of Iowa: I should like to ask one more question of the gentleman of Winnipeg, and that is whether their power for generating electricity is from water or coal.

CHAIRMAN WHITE: Hydro.

MR. ZOERCHER: I want to make one statement as touching upon the questions I asked. About twenty years ago I was a leader in my own community to bring about municipal ownership of a water plant. I was acting in good faith. I had the same dream my neighbor here has now; that when we are going to do it ourselves we are going to finally relieve the citizens from paying any taxes, and pay all the expenses from the earnings of the water plant and light plant. In Indiana, you know, every four years we have a new city administration, and we burned up two or three electric systems. Since then the state board of tax commissioners has been given some power over bond issues, and the last time they wanted to have one, to put in a new electric system there, after they burned up two or three, we put in a provision granting them the right to issue the bonds, provided that the city council would appoint a committee of five business men and let them manage the water plant thereafter. The public service commission had to give its consent also, and one of the commissioners had that in his finding, but he made the statement that he did not intend to say that they might not take those five business men from within the coun-

cil, and then of course they hurriedly and immediately picked them from the council. When we heard of it — I think I went down there because they needed some more money, and it was my home town and I could talk to those fellows pretty straight—I told them that if they did not appoint a committee of business men to advise with them, and then let the men who were appointed alone, so far as our board was concerned they would never get any help or aid from us. The new man they appointed they said was qualified, and I said to him, the only question ought to be, as long as you give the city good service, you remain on the job, and when administrations come and go, you ought to stay there. Whenever we can do that in the United States, whenever we can operate publicly owned utilities in the way that you (Nichol) can, and keep the politicians from sticking his hands into it, you can do it all right here; otherwise you cannot. (Applause)

Chairman White: I was very much interested in Mr. Armson's paper this morning, and in the figures he gave us regarding the increase of taxation in Minnesota. It occurred to me at the time, and at other times in thinking the matter over, that it is not entirely a matter of increased expenditure. You have got to look at it from the other angle; that the matter is a question of the decreased purchasing value of the dollar. Mr. Armson put it in practically the same way, working it from the other side, that wages and material are higher. It is also that the dollar is lower; and I think if you estimated your expenditure this year or last year in wheat or barrels of flour, that you would find it was three times as great as it was five years ago. The widening governmental activity, of course, is something that you gentlemen of the tax commissions have very little to do with. That is a matter for the legislature, and I don't suppose you are in a position to curb them except by advice and whatever means you can use.

Now, before calling upon Mr. Hallanan, of West Virginia, if there is anybody who wishes to ask a question regarding the paper read by Mr. Donley, the meeting will be open a few minutes for that purpose.

(No response)

Chairman White: Mr. William S. Hallanan, State Tax Commissioner of West Virginia.

William S. Hallanan of West Virginia: Mr. Chairman, and ladies and gentlemen of the National Tax Association: After having had the privilege at the Bretton Woods conference last year of outlining the fundamental principles of the West Virginia sales tax, I felt that my duty had been done. However, I appreciated, not so much as a personal compliment, but rather as an indication of the general interest felt by taxing men and taxing authorities

in the subject of indirect taxation, that a resumé of the experience and of the results of the first year of West Virginia's administration of the unique and distinctive principle of indirect taxation, popularly known as the sales tax, would be of interest. I say that I felt I had done my part last year, and in responding to the invitation of the distinguished secretary of this conference, I felt somewhat in the position, as I heard related the other night at a banquet, of the president of the Bethlehem Steel Corporation, Mr. Charles M. Schwab. He told a story of how he had started right outside of Pittsburgh to erect a monumental stock farm, and the word went out over the countryside that Charley Schwab was going to buy up all the cows in the neighborhood, and around from near and far they came, friends of his boyhood days, each one with a favorite brand of cow. Finally one Sunday morning he was sitting on his porch and one of his school-day chums came down the road and had an old cow with a rope around her neck, and he said, "Charley, come out here, I would like to see you." Mr. Schwab went out in response. The fellow said, "Mr. Schwab, I understand you want to buy a cow." Said he, "I want to buy a number of cows, Jerry; what kind of a cow have you got?" "I don't know very much about her." "Well," said Mr. Schwab, "I want to get some pretty good cows on this stock farm of mine; how much milk does she give?" "Well, Mr. Schwab, I cannot tell you very much about that; I don't know how much milk she really gives." "Well, what do you know about her pedigree?" "Well, I don't know very much about her pedigree, Charley; she is just a pretty good old cow." "Can't you tell me anything about this cow? Don't you know how much milk she gives?" "No, honest, I cannot tell you very much about her. I can tell you this, she is a damn good-natured old cow, and if she has got any milk she will give it to you."

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WALTER S. HALLANAN
State Tax Commissioner of West Virginia

After having had the privilege at the Bretton Woods conference last year of presenting to you the fundamental principles underlying the West Virginia sales tax, which had just been made effective, I did not anticipate the honor of being given a place on this year's program. However, I accept this opportunity which has been extended, as indicating the general interest felt in the experience we have had in West Virginia during the first year's administration of our novel and distinctive species of indirect taxation, so quite apart from the lines which have been followed by

many of the other states in the seeking out of new sources of revenue.

While I desire to confine my remarks to the practical working of the West Virginia gross sales tax law, a law, as you know, enacted by our 1921 session of the legislature and which imposes a tax for the privilege of engaging in business or practicing a profession in our state—and therefore, perhaps, more accurately labeled "Business-Profession Privilege Tax"—I may be excused if, at the outset, I make only a brief reference to the proposed federal sales tax in comparison.

A distinction is to be drawn between a sales tax as proposed for federal tax purposes and the state sales tax, such as has been levied in West Virginia. A federal sales tax applied nationally would reach and affect the marketing of articles, goods and commodities in every city, town and village of the country, without regard to state lines. In the working of a national sales tax there would be no interstate inhibitions to interfere with the incidence of the tax. All sales made, either between citizens of one state or between citizens of more than one state, would be subject to it. The consequence of this universal application would be to place every producer, every merchant and every manufacturer on a strict basis of equality so far as the tax is concerned, in their respective markets. The Ohio merchant would add exactly the same tax to the sales price of his goods as the West Virginia or Pennsylvania merchant; the Pennsylvania manufacturer would be subject to exactly the same tax on the sale of his manufactured article as the Virginia or West Virginia manufacturer. The product shipped by a West Virginia manufacturer to the New York market would reach that market with exactly the same tax added as that applied by his Pennsylvania competitor. The consequence of the evenness in the distribution of the tax burden, as between manufacturers in different localities would be to neutralize the tax as a selling factor. The manufacturer would simply pass the tax on to the consumer. The West Virginia coal producer, shipping his products to New England, Chicago and the Northwest markets, reached by the lakes, would be under no obligation to absorb the sales tax because the coal produced by the competing coal fields of Pennsylvania and Ohio and other states would reach the same markets with the same tax burden added. The consumer in each state would pay the tax.

But when a state legislature applies the sales tax principle to its producing, manufacturing and selling industries, a different state of affairs is found to exist in the application of the tax. The taxpayer may pass the tax on or he may absorb it, or he may absorb only a part of it. The West Virginia manufacturer, shipping his goods to competing markets, likely finds himself absorbing the tax

burden, for the reason that his Pennsylvania or Ohio competitor's goods reach the market with no sales tax added. Assuming, therefore, that the conditions in West Virginia and neighboring states are equally favorable for the manufacturers of the competitive articles, the West Virginia manufacturer will bear the cost of the sales tax. The tax in this case is in effect, not a sales tax, in the accepted sense of the word, as used with reference to the proposed federal tax—a consumer's tax; but it is a privilege tax, pure and simple. In fact, a sales tax cannot be levied on interstate shipments, as we all know; so that there is really no such thing as a state sales tax applied to shipments to out-of-state points. The West Virginia manufacturer pays the State of West Virginia a privilege tax for the privilege of engaging in manufacturing in West Virginia, based on the entire value of the products manufactured in the state, ascertained by the gross proceeds derived from the sale thereof. In exactly the same way the West Virginia coal producer who ships his entire output to out-of-state points pays the State of West Virginia a privilege tax for the privilege of mining and producing coal in West Virginia, based on the value of the entire production in the state ascertained by the gross proceeds of sales. In effect, it is a production tax on the industries engaged in the mining of natural resources.

No importance at all is attached to the question as to where our gross sales tax actually falls. It is not even mentioned. That the tax rates are so small and the tax so negligible, perhaps, accounts for no discussion concerning it. Personally, I am of the opinion that this question occupies altogether too prominent a place in the discussion of revenue measures generally. Moneys necessary for the maintenance of government must be obtained, and I believe most of us feel that in the last analysis the consumer contributes a very large part, regardless of the name of the tax—whether it is ad valorem, license, excise, income or sales, or whether the tax is laid directly or indirectly. Down in West Virginia we feel that everyone who is receiving the protection of the state's sovereignty should contribute to the support of the government. It makes for better citizenship; it makes for more efficient and more economical administration; but we feel that the burden heretofore has been permitted to rest too heavily upon real estate and the small home owners.

Prior to 1921 business activities contributed very little toward the support of the state government. For six years prior to 1921 there was levied and collected a tax for the privilege of doing business in a corporate capacity, the rate for the years 1915 and 1916 being ½ of 1% on the net corporate income from business transacted and capital invested in the state. In 1917 the rate was increased to ¾ of 1%. The revenue produced from this source

fluctuated considerably, owing to business conditions. Collections in 1916 were $322,000; in 1917, $500,000; in 1918, $1,300,000; in 1919, $700,000; and so on.

The millions owed by West Virginia as a portion of the old debt of the Mother State, adjudicated by the supreme court not many years ago; the extensive road-building program; the rebuilding of the state capitol which was destroyed by fire in the early part of 1921 and the requirements of the schools of the state, demanded more revenue and it became necessary for the 1921 legislature to look about for another more dependable and more stable source of revenue. The corporate business of the state felt that it had been discriminated against more or less, because of the application of a tax on its net income, while the net income of persons, firms, partnerships and associations, unincorporated, escaped taxation. The legislature and those in authority, after six years' experience with the net income tax on corporations and the difficulties incident to the filing and checking of the returns in connection therewith and the collection of taxes, and finding the vexing questions, such as salaries of officers, the depreciation allowances and the allowances for depletion of natural resources in the case of coal mines and oil wells, a constant source of annoyance; being mindful also of the tendency of the corporate net income tax to fluctuate wildly; and being of the opinion that the tax should apply as far as possible to all businesses, whether incorporated or not, were willing to adopt and put into effect the so-called sales tax law.

So far as the State of West Virginia is concerned, the questions of whether the consumer pays the tax or it is absorbed; the turnover feature and its cumulative effect as regards taxes; the hurting of business; the difficulty of administration, and other suggested drawbacks, I find after an experience of more than a year are mere bugaboos.

Most of the state's records were lost in the fire which destroyed the capitol building; but I happen to have retained some of the returns of net income made by corporations, covering the calendar year 1919. By comparing what would have been paid by them in 1919, had the gross sales tax law been in effect, with the net income tax actually paid, I was surprised to find how equitably the tax applies against the various classes of business. Here and there, of course, the difference was found to have been noticeable, but on the whole the flat tax rates provided in our law are sufficiently equitable, in my opinion. Whenever it appears that a particular industry is paying out of proportion to the others, I feel sure our legislature will take due cognizance of the fact and make a proper modification.

True enough, equity might prevail to a greater extent, were the rates graduated or if a different rate might be fixed for practically

each class of business. It is common knowledge that while one business turns its stock over, say four times a year, another will turn only two or three times and still another only one time. The invested capital in one instance is low and the rate of net profit high; in another, the invested capital is high and the rate of net profit low. In some cases the manufacturers sell direct to the consumers—one turnover. In other cases, the tax will be cumulative, for the reason that the manufacturer sells to the wholesaler, the wholesaler to the retailer and the retailer to the consumer. But, in my opinion, considering the low rate, the taxes of any taxpayer will not be so large, out of proportion or unreasonable, as to justify the installation of a system of complicated returns with all the attendant confusion and costs to the taxpayers incident to their preparation. Simplicity in the preparation of returns is highly desirable. The taxpayer wants it. The state wants it. We have simplicity in the present law.

In going over a number of returns of net income covering the calendar year 1919, with a view to determining whether any industry or class of taxpayers would be discriminated against by reason of the flat rates provided in the gross sales tax law, I found that the gross sales of producers of coal, oil, gas, etc., in 1919 were 15% and the gross sales of manufacturers were 30% more than in 1922.

The taxpayer himself, if he so chooses, can make his return without the expense of special assistance and he knows almost to a certainty what his tax will be and that when the tax is remitted that is the end of it—no bills for back taxes, or to cover questions admitting of doubtful construction.

The tax is a certain and stable source of revenue. This, to my mind, is one of its most meritorious features and is quite in contrast with the fluctuating revenue that was produced by our tax on corporate net revenue.

Some manufacturers of our state have opposed the gross sales tax because of what they conceive to be a disadvantage in competition with manufacturers of adjoining states, but if these interests would look at this tax from the viewpoint of its being a franchise or privilege tax, the sales only being used as the measure by which the amount of tax is determined, and would then compare the amount of such tax with the franchise taxes of adjoining states—and this is the only correct way of viewing our gross sales tax—I feel quite sure that the disadvantage would not loom so formidably

On the whole, I am convinced that the business profession tax has been a success. True, it has not produced the revenue that was anticipated by the legislature that made it a law, but that has been due to the fact that the volume of business for the fiscal year ending June 30th, last, has been decidedly less than the normal

business in the state. It has essentially established the production tax principle in the state, in that the basic industries associated with our greatest natural resources—coal, oil, gas, limestone and other minerals—are classified under a distinctive division and are taxed at twice the rate imposed on general business activity. It is shown that for the first year of the operation of the tax, 46.5 per cent of the total revenue came from the production class business. While the heavier rate has imposed no undue burden on our natural resource industries and they have been content to accept the larger tax rate without question, this act of the legislature has been effective in quieting the agitation for a special tax on this class of industry. It seems to be a very happy solution of this problem and at the same time has prevented a discriminatory species of tax burden on the industries which have made West Virginia a great and prosperous state.

From July 1, 1921, to August 15, 1922, there was collected under the law the sum of $1,910,505.28, of which amount the producers of coal paid $674,383.40 or 35.8%; the producers of sand and limestone paid $17,690.79 and the producers of oil and gas $196,244.18; a total for production of $888,318.37, or 46.5% of the total amount collected. The manufacturers of the state paid $472,784.40, or 24.75%; the sellers of property, real and personal (except wholesalers) paid $327,394.23, or 17.1%; wholesalers and jobbers paid $39,718.59, or 2.1%; banks and public utilities paid $93,411.50, or 4.9%; and professions and all other businesses not included in the preceding items paid $88,878.19, or 4.7½. The period covered by the above collections was subnormal from a business standpoint. Coal production was unsettled and many factories were idle or at a low ebb in operation. Under normal conditions, the law as it stands, in my opinion, would produce approximately from $3,500,000 to $4,000,000 annually.

The law, of course, will need slight revisions from time to time, but no amendments to cause serious inconvenience to the taxpayer will be necessary.

I ruled that the sales value of coal and other minerals is to be used to determine the taxable amount, and that if the coal or other mineral is not sold in its original form, but is converted by manufacturing process into coke or other secondary product, the taxpayer is liable under the manufacturing section. This interpretation seems to conform to the general tenor of the law, which is to place a tax upon gross sales.

Some difficulty was experienced in the case of foreign corporations that send raw materials into West Virginia to be manufactured by affiliated or subsidiary corporations, due to the fact that the subsidiary corporation does not own the materials manufactured and makes the claim that it is not engaged in the *business* of manu-

facturing and for that reason should be classed as a contractor, using the price paid by the foreign corporation for the operations conducted in West Virginia as the measure of the tax.

I am of the opinion that the wholesaler is escaping taxation to a great extent, both on account of the low rate of one-third of one per cent levied upon gross profits and on account of exemptions allowed on drop shipments. The present tax on gross profits, of course, is not a sales tax at all. It is a reversion to the old excise tax, with an advantage very much in favor of the taxpayer. The returns of wholesalers are much more cumbersome, harder to handle and more difficult to check, because the base of the tax in their case is gross profits. By changing the base from gross profits to gross sales and modifying the rate, the wholesaler's tax will be brought into harmony with other taxes levied under the act. At this time I am of opinion that a rate of one-tenth of one per cent on gross sales would place the wholesaler on a par with other businesses.

Our law provides that the basis of the tax, as relating to banks and trust companies and public utilities, shall be the gross income; in the case of public utilities, the gross income derived from intrastate business only. The gross income of banks and public utilities consists exclusively of the value of the services rendered. Any raw materials used by these organizations are used only in the way of installations necessary to perform the services, such as railroad maintenance, installation of rolling stock, materials, rail, etc. The value of the taxable amount does not compare with similar taxable amounts in the case of taxpayers whose taxes are based upon the value of tangible property sold. This argument applies, however, to all taxpayers not selling tangible property and whose taxable amounts are thereby reduced to a minimum, in comparison with the amount of net profits derived from the business. Two-fifths of one per cent instead of one-fifth of one per cent on gross income, as to banks and public utilities may be recommended. Banks especially are not paying a sufficient tax under the present rate as their taxable amount is practically the amount of their gross profits.

The law provides that the basis of the tax, as relating to the taxpayer engaged in a profession in West Virginia shall be the gross income, at a rate of one-fifth of one per cent. Outside of the office maintenance and the moderate expense incurred on account of equipment, the income derived from professional service consists largely of net income, and for this reason the tax should be increased in proportion to the ability of the taxpayer to pay. For instance, a doctor with a professional income of $10,000 is not subject to any tax. Assuming that his expense amounts to one-third of his gross income, his net income is $6,666.66. An average retailer, to produce a net income of $6,666.66, would do a business

amounting to, say, $40,000, upon which his taxes, after deducting the $10,000 exemption, would amount to $60, against the professional man's total exemption.

Our gross sales law levies taxes for several privileges, namely, (1) on production, at the rate of two-fifth of one per cent; (2) on manufacture, at the rate of one-fifth of one per cent; (3) for the privilege of selling property, real and personal, whether farms, merchandise, or capital assets, the tax applying in all cases (except in the case of a wholesaler or jobber) on the gross sales, at the rate of one-fifth of one per cent; and in the case of a wholesaler or jobber, on the gross profits (gross sales less cost of goods purchased) at the rate of one-third of one per cent; (4) on banks and public utilities, one-fifth of one per cent on the gross income derived from intrastate business only; (5) on professions, one-fifth of one per cent on the income derived therefrom, and (6) on any other gainful business not above provided for, one-fifth of one per cent on gross income.

The specific exemption of $10,000 annually, as I have interpreted the law, may be deducted from the amount of gross sales, gross profits or gross income on which the tax for the exercise of the particular privilege is based; so that a taxpayer, if his business activities fall under two or more sections of the law, may deduct two or more exemptions. For instance, coal companies are entitled under the present act to three exemptions. Manufacturers get two or more exemptions. Small business handling tangible property and also selling services, such as garages, claim two exemptions. The small merchant, however, whose business does not warrant the payment of a tax, and to whom the exemption clauses of the act are peculiarly applicable, is not affected by this change, as he receives but one exemption in any case. The exemption of $10,000 is too high. Five thousand dollars, it seems to me, would be liberal. I have in mind the recommendation to the legislature that the exemption for any taxpayer be $10, deducted from the total taxes; but it will be for the legal minds to determine whether, under our constitution, in the case of privilege taxes, one exemption to apply against the taxes due on account of the exercise of several privileges will be sufficient.

In the working of the West Virginia gross sales tax, as applied to sales of tangible property which consist of real estate transactions, there seems to be room for considerable simplification in the method of applying the tax. Real estate sales may be divided into two branches, consisting of (1) sales made in the usual course of business by a recognized real estate dealer and (2) casual sales of real estate. It is probable that 80% or 90% of all real estate sales made in any county of the state consists of casual sales of real estate by home owners, and these real estate transactions are

distributed among practically the whole body of the citizens of the community. Owing to the fact that an exemption of $10,000 is granted under the law, the great majority of real estate sales of a casual nature escape the tax, if not completely, at least to a degree that leaves the actual tax collection an inconsiderable amount. It is found that the great bulk of taxes collected on account of transfers of real estate will come from comparatively few persons in each county. The tax for the most part will consist of (1) very large real estate transactions of a casual nature, and (2) a great many transactions of real estate made by persons engaged in the real estate business.

In conclusion, gentlemen of the association, permit me to state in frankness that the sales tax in West Virginia was not enacted into law except after a prolonged and bitter fight which was characterized in the ultimate end by compromises and concessions by its advocates. We have tried to make of it a tax that will be relatively free from distasteful inquisitorial features and large expense of administration. As a result, there have been many converts to the equity and justice of it — many who before regarded it as a vicious departure. I think I speak the sentiment of the state when I say that it is more acceptable than any other form of indirect taxation now in effect in any state. Consequently, instead of any step in the direction of its repeal, I expect to see the next legislature deal with it exclusively in the way of strengthening it and making it a permanent source of state revenue. Like any other new tax legislation, there is need for substantial amendment and revision, but the principle, I am sure, we have established definitely.

I hope that in its wisdom the executive committee of this association will determine that the next year's conference shall be held at our famous White Sulphur Springs and that from that viewpoint you may have opportunity to see and judge for your respective selves what progress we have made in our taxation program.

Mr. Hallanan (continuing): Now, Mr. Chairman, may I be privileged to give this description, in the way of a toast, as to where West Virginia is:

Here is to West Virginia, whose most northern city is farther north than Pittsburgh, Pennsylvania, hence it is a northern state; whose most eastern city is farther east than Rochester, New York, hence it is an eastern state; whose most southern city is farther south than Roanoke, Virginia, hence it is a southern state; whose most western city is farther west than Canton, Ohio — here is to West Virginia, and whether she be eastern, western, northern or southern, she is a damn good state for the shape she is in.

Captain W. P. White: What relief has been offered the corporations in West Virginia by the sales tax?

MR. HALLANAN: That is the only tax applicable to corporation activity, except the charter tax, which is a very nominal tax, based upon the capital stock, a very nominal tax. In other words, any corporation under fifty thousand dollars pays a tax of thirty dollars a year for its charter.

MR. JOHN HARRINGTON of Wisconsin: What about general property taxes?

MR. HALLANAN: That is applicable for local purposes, of course.

CHAIRMAN WHITE: I suppose there is some exemption to the clergy under that, and school teachers?

MR. HALLANAN: The clergy usually do not get over ten thousand dollars in West Virginia.

CHAIRMAN WHITE: That applies to the lawyers also, I suppose.

MR. BUELL: If there is time, I should like to point out the distinction between the tax on coal and oil, and so forth that the gentleman has just described in West Virginia and the tax that the Minnesota legislature levied at its last session upon iron ore.

CHAIRMAN WHITE: Pardon me a moment; I think it should be confined to asking the gentleman questions.

MR. BUELL: Beg your pardon; I understood the rules provided for discussion not to exceed five minutes.

CHAIRMAN WHITE: Only discussion upon the points raised in the paper.

MR. BUELL: And that is exactly the point I am discussing. The point is the difference between their tax on coal and minerals and our tax on iron ore.

CHAIRMAN WHITE: Yours is not a sales tax.

MR. BUELL: It is exactly the sales tax.

CHAIRMAN WHITE: I think the discussion should be confined to questions pertaining to the sales tax.

MR. BUELL: Then I have nothing to say, because the Minnesota tax is so totally different in its character, and to my mind so far superior to the West Virginia tax, that I think this conference ought to be enlightened as to what we have done in Minnesota, but if the conference does not want to know what we have done in Minnesota, then I will keep still.

MR. H. C. MACKENZIE of New York: I move the gentleman be granted the privilege of the floor for five minutes to explain.

CHAIRMAN WHITE: Does the motion receive a second?

(Motion seconded)

CHAIRMAN WHITE: Very well, you have five minutes.

MR. BUELL: I think the conference should know that the Minnesota iron ore tax is based on the principle of not taxing the gross value of the ore. If we were to tax the gross value of the ore taken out of our mines up here, even one per cent, some of the mines would be bankrupted the first year, because the one per cent tax on gross value of the ore would be more than their entire profit. If we were to tax the gross value of the ore on some of the mines ten or fifteen per cent, they would not be hurt hardly at all. That is the reason why the legislature of Minnesota abandoned the idea of taxing the gross value.

In the year 1918 the M. A. Hanna company took out in this state nearly one million tons of ore and took it out in such a way that their total net profits reported to the federal government was only eighteen thousand dollars. If we had had the gross value tax, which was once attempted to be put over in this state, of two per cent on the gross value, their tax that year would have been fifty-four thousand dollars, three times their entire net profit. Those facts led the legislature to adopt a different principle entirely, and the tax that is now on the statute books, and has been sustained by the United States lower court—and we think it will be sustained in the supreme court without any question—is derived by reducing or by subtracting from the total value of the ore at the mouth of the mine, first, the entire labor cost of separating the ore from the matrix and bringing it to the surface ready to be taken away; secondly, a proportionate share of the cost of sinking the shaft and running the drifts in underground mines; third, a proportionate share of the cost of removing the over burden in open pit mines. The whole thought is, that the tax should not be levied upon the business or occupation or labor involved in the mining of the ore, but it should be levied upon that value of the ore which is due to its location or its quality, that part of the value which Mr. Ben Dickson very aptly called the heritage element in its value, and which some of the opponents of the bill very seriously objected to. Although while the bill is labeled an occupation tax, and the United States court has said "yes, it is all right, it is an occupation tax," you will notice that the basis of taxation is not to any considerable extent the occupation of mining ore but is to almost the entire extent the heritage or natural value of the ore as it lies there in its native position in the earth. Now, that is something that is entirely new, in the United States, so far as I have been able to learn, in all attempts to tax natural resources of this character, where the natural resources are destroyed in the process of production. The rate of the tax is six per cent, in my opinion not nearly enough.

The first thought was that the tax should be ten per cent, but the commission would not let it go out with anything more than six.

Just one word more. In order to show you that we have not finished the job yet but expect to do so at the next session of the legislature, this tax only applies to those owners of mineral lands who operate their own mines, and you notice that they secure this value because their mines are rich, because the ore is high-grade, or lies near the surface so it can be shoveled up easily. There is another group of land owners in Minnesota who do not operate their mines at all. They lease them on a royalty, and they collect all the royalty that the traffic will bear. That is a habit that land owners have, you know; and we had a bill to tax the royalties that those land owners collect, so as to have two groups of land owners on the same general basis. That bill passed the house with only fourteen votes against it out of one hundred and thirty-one, but was lost in the senate by a very few votes. I may remark that thirteen of the senators that voted against it are not now in the running, and in my opinion six or seven more won't be after November.

It is perfectly plain, of course, that those two groups of land owners should be treated alike, that if you tax the royalties collected by one group six per cent, you should tax the net clean-up, the net profit, which has exactly the same economic character, six per cent. If you tax one ten per cent you should tax the other ten per cent.

Captain White: Are these properties that pay other taxes beside?

Mr. Buell: Oh, yes, that is outside of all this. This is a special tax at the time they sever the ore and get away with it, on the theory that they are destroying the natural resources, which will never be there again. The state will never get another whack at it under any circumstances, and for that reason it is entirely proper that a part of the profit should be yielded up to the state.

Perhaps it will be interesting to you to know that the net clean-up in Minnesota by iron mine owners in normal years will run from sixty-five to eighty-four millions of dollars, clean velvet over and above all expenses, everything—their net profits.

Captain White: How much did the Hanna company pay on that basis?

Mr. Buell: On the basis of six per cent the Hanna company would pay six thousand dollars out of their eighteen thousand dollars, but the big fellows clean up six or eight millions on ore, where there is two or three dollars profit in every ton they dig out. They would pay six per cent on the profit.

MR. HALLANAN: Do you concede that a company in mining one million tons made eighteen thousand dollars net?

MR. BUELL: I don't concede anything of the kind. That is the report they made to the federal government, and they were not penalized or prosecuted in any way.

MR. HALLANAN: If the Hanna company mined one million tons, what would they have paid the State of Minnesota on a basis of six per cent or any other flat rate? I am asking that in order to draw a conclusion as to what they would have paid if the taxes had been similar to the West Virginia tax.

MR. BUELL: Well, your West Virginia tax, as I understand, is on the gross sales. A two per cent tax would have raised fifty-four thousand dollars, a six per cent tax would be three times fifty-four thousand dollars, which would be one hundred and sixty-two thousand dollars.

MR. HALLANAN: Now, is there anything in your proposed tax, which you are discussing now, which would prevent or prohibit the Hanna company from making a like return to the government of the State of Minnesota?

MR. BUELL: I assume that their return to the government at Washington was an honest and correct return. There is very specific provision for making their returns, and the tax commission has very wide authority to get correct information in case they suspect that there has been any skulduggery.

MR. HALLANAN: That would have to be very wide authority.

MR. BUELL: Oh, yes, I think the bill covers the ground very carefully. It was drawn with very great care by the attorney general and the tax commission, after we got the idea based on the principle of taxing only the natural element and not the gross value. That is the kernel of the whole question. We do not tax the gross value of the ore, because it would ruin all the small men. We do tax their net clean-up.

MR. HALLANAN: Don't you think it is more difficult to determine what the net clean-up is than it is to tax the gross sale value?

MR. BUELL: More difficult, oh yes; more difficult but much more just. Taxation should be fairly just, you know, even if it is a little more difficult.

MR. HALLANAN: Well, it is a problem then of administration.

MR. BUELL: Largely, yes.

MR. DOUGLAS SUTHERLAND of Illinois: May I ask Mr. Hallanan a question? Do I understand that the revenues from your sales

tax go entirely to the state treasury? They are not distributed at all to the municipalities?

MR. HALLANAN: Exclusively state revenue.

MR. SUTHERLAND: And personal property that may be involved is then subject to any local ad valorem tax that may be levied?

MR. HALLANAN: Yes, sir.

Question: Isn't it a fact, Mr. Hallanan, that part of the moneys received from those sources go back to the local districts through appropriations for schools and other purposes?

MR. HALLANAN: Well, that is true, because of the fact that the state appropriates money for the support of local schools, but the essential fact remains that the tax collected by the state on the sales tax goes into the state fund and then is distributed by legislative appropriation.

MR. JOHN E. BRINDLEY of Iowa: I don't think the cost of administration was brought out in the paper. What is the cost of administration of this tax, Mr. Hallanan?

MR. HALLANAN: That was included in the paper but by reason of the time restriction I was compelled to go over it. The cost of administration is about one and one-fifth per cent.

MR. JOHN F. CASE of Missouri: You said that the sentiment of West Virginia you thought was favorable to the continuance of the West Virginia sales tax. How about the attitude of the farmers of your state?

MR. HALLANAN: In reply to that question, Mr. McKenzie is here. He represents the farm bureau, and he has been down through West Virginia, and if I may be permitted I should like him to respond to that question, because he has been in direct touch with the West Virginia farm bureau federation. May I ask Mr. McKenzie to reply to the question?

MR. H. C. MCKENZIE: I don't know that I would like to give a definite answer as to the sentiment of all the farmers in West Virginia. I might give some indication, though.

As Mr. Hallanan has said, I have been in West Virginia recently and in consultation with their tax committee, and I find they have a very able tax committee, as I conclude, and that they have an open mind; they have not drawn any definite conclusions yet as to this so-called sales tax, which in reality is not a sales tax as we ordinarily consider it.

The situation in West Virginia is, as to the farmer, very much as in many other states, and that is the greater proportion of the tax has come to be centered on real property, both through the

escape of tangible and intangible personal property and through the exemption of some real estate, so that the base has become narrow there as it has in many other cases. I don't think the farmers of West Virginia are inclined to condemn on the evidence they have at present. They have a committee which is now working, and which has been to see Mr. Hallanan. They have been to see the former tax commissioner, and they are out now looking for light, and within the next three or four months their position will be formulated so that they will have a definite position. Mr. Hallanan called your attention to the fact that on coal that is shipped, for instance, outside of the state, the tax won't be shifted to the consumer, because the same tax is not employed in Ohio, Pennsylvania or any other state, but I don't think that is true as to many of the other elements in the tax. You take all other wholesalers, all other people who do business exclusively within the state of West Virginia, and I apprehend that the tax will be very much more largely passed on to the inhabitants of West Virginia than the part that goes outside of the state. You will find the farmers of West Virginia and all over the United States opposed to the principle of a sales tax or a tax on gross production, which is not a real measure of a man's ability to pay taxes. In that respect I am much more inclined to think our friend from Minnesota has come nearer to the true idea of what a tax should be.

Mr. Hallanan: May I ask this question: Is it not true that in the information which was conveyed to the taxation committee of the West Virginia farm bureau federation, it was shown that less than two per cent of the farmers of West Virginia were paying a tax under our present law?

Mr. McKenzie: You mean the sales tax?

Mr. Hallanan: Yes.

Mr. McKenzie: Yes, I think that is true. As I got the figures, it was almost an infinitesimal part of this tax. I don't think the farmers would have any reason to complain of the part of the tax that they pay directly. The injustice, if any should exist, would be through the passing on of the tax on the proportionate business done in West Virginia.

Mr. Hallanan: Wouldn't that be negligible to the tax on the product of West Virginia transported to some other state?

Mr. McKenzie: The great bulk of that tax will be collected from some parties outside of the state; no question about that.

Mr. Buell: Will you kindly permit me to call attention to one point I overlooked. I hope you have all noticed that the Minnesota iron ore tax is a tax that will not be passed on in any way

whatever. If you haven't, that is a good problem to study on between now and the next meeting of this association.

Mr. Hallanan: The rates were arrived at by the legislature as a matter of public policy, to determine the cost to the state of the protection of the industry. First I refer to the coal industry which is peculiarly expensive to the state, in this sense, that by reason of West Virginia's coal development there must be maintained a system of state supervision of mines, which costs some three to four hundred thousand dollars per year; also a state system of miners' hospitals established for the benefit of those who may be injured while engaged in the hazards of the mining industry, and which costs the state some three to four hundred thousand dollars a year; and finally, the fact that the coal industry has been developed in many communities where there is no local police protection, they expect the state to furnish protection through the state constabulary department, which is maintained at an extraordinary expense of some half-million dollars per year. For that reason the production industries were put into a separate class and that business activity was taxed double the rate of general business activities. The other classes, generally fixed at one-fifth of one per cent, contributed their proportionate share to the cost of state government. There are some inequities, such as I pointed out in connection with the taxes on wholesalers and jobbers, which are relatively small, and which I anticipate the next legislature will correct. The main point I desire to make is this; that the production industries give to the state certain special expenditures, and for that reason those particular industries are taxed at double the rate of ordinary and general business activities.

Mr. Rothschild of New York: I should like to ask the gentleman from Minnesota why it would be impossible for the miners of iron ore to pass on a substantial tax.

Mr. Buell: I will try to answer that. I was in hopes I would be asked to answer that because it would be a good problem for you to mull over the next year. Here is the point: The gentleman from New York, I guess, will admit that if we were to tax royalties that are collected by the group of mineral land owners who do not operate but collect royalties—if they were to tax their royalties to any extent, we see right off it would simply come out of their pockets.

Mr. Rothschild: I don't admit it. If you tax the royalties enough and the contract for royalties is one which can either be changed or new contracts made, why they will have to get that much more royalty.

Mr. Buell: Have to? They can't. They are getting all the

traffic will bear now. The man who owns the land out of which the ore is taken all the while gets every cent there is in it in royalty, every minute, and don't you forget it. He has an economic law there that is more powerful than any law any nation could make, that enables him, before he will let the ore be taken out, to collect all the royalty there is in that ore; he gets every bit of it all the while, just as the landlords who own the City of New York get the entire rental value in land of New York all the while.

MR. WHITE: Well, they don't. You are in error about that.

MR. BUELL: The rents don't go up unless your population increases.

MR. WHITE: Taxes go up.

MR. BUELL: I think it will be pretty generally conceded that a tax on mining royalties will be a tax that the land owner who receives the royalty will have to pay. At any rate the land owners that were receiving royalties were the owners that got extremely busy in an attempt to defeat the royalty tax at the last session of the legislature of Minnesota, and I think they knew what they were doing.

Now then, this tax on the heritage element in the value of the ore taken out by those land owners who operate their own mines, is of the same economic character, exactly. If they do not see fit to operate their mines, then they lease them on a royalty and get that value in the form of a royalty, so that substantially our iron ore tax of six per cent on the net value of the ore is a tax on potential royalty.

Probably the Minnesota iron mines are the richest mines in the world. They can produce ore in Minnesota cheaper than any other place in the world.

MR. ROTHSCHILD: How about the corporation which produced a million tons and made a profit of only eighteen thousand dollars.

MR. BUELL: Don't you see the point? The costs of operation of that company were excessive. Their ore was deep down in the ground, or it was subject to some specially difficult process of operation. We had the Bangor company up there, that operated for four years, dug ore right along for four years, and lost over four million dollars on the process. Their ore cost them more than they could sell it for on the market.

MR. ROTHSCHILD: Did they stop operating?

MR. BUELL: They did stop operating and they have not operated at all for a number of years. Now, under our tax they would not pay any tax at all.

MR. ROTHSCHILD: They would not operate.

MR. BUELL: But if they did operate they would not pay any tax.

MR. ROTHSCHILD: Why should they operate at a loss? Business is not carried on that way.

MR. BUELL: Certainly they will not operate at a loss; they will quit; but if they were operating at a loss and our tax were enforced, they would pay nothing.

MR. ROTHSCHILD: Consider this one corporation which turned out one million tons, with an eighteen thousand dollar profit, with reference to the condition which would be brought about if they had a sales tax — something they could not pass on because the sales tax would be more than the profit. Of course your answer is that they could not afford to operate, that that is the kind of organization which would have to close down. The rich concerns which make so much money on their ores certainly could pay the sales tax if you passed one. In other words, the smaller the profit, the more the necessity would arise of passing it along. With a large profit, of course, a corporation could absorb the tax, a tax of one per cent or less than one per cent.

MR. BUELL: The whole thing hinges on this: there are a lot of miners up in the iron country of Minnesota working on a very close margin. There is very little profit in the business. They continue to work at a very small profit, but if we were to put a gross tax upon them—we proposed a two per cent tax on them—and the fact is it figured out that the tax would be heavier than their profits. That was the principal reason we induced the author of that bill to withdraw it from the committee and had it made over so it would be a tax not on their gross profits, not on the gross value of their ore at all, but upon the net profits. Now, the net profit, of course, in the case of iron ore is the economic equivalent of royalty. That is, if they did not operate as owners, they could not get it in the form of royalty.

MR. ROTHSCHILD: Could they get it from a mine so situated that it was not a paying mine?

MR. BUELL: No, we are not discussing that at all.

MR. ROTHSCHILD: A mine which turned out one million tons and then turned out eighteen thousand dollars profit is not a paying mine, and then the other mine that worked for four years and did not make a profit, those are not paying mines.

MR. BUELL: I hope the gentleman won't get it into his head that most of our mines are of that character. The most of them are not of that character. We have thousands of acres of iron land in northern Minnesota that would not pay to operate at all at the present time, if there were any tax or any burden upon them

whatever. They may be some day. Then we have mines up there where it does not cost at present over twenty-five or thirty cents a ton to shovel the ore by the steam shovel into the car to ship it to the terminal point, ore worth three, four and five dollars a ton, according to quality. This tax was designed to reach those fellows—the fellows cleaning up a very large profit by destroying the natural resources up there, taking it away from the state. Nobody had any design to reach the small man not making any profit, and this tax is so designed that for practical purposes it won't reach the small man making no profit or only a very little profit. That is the merit of the proposition.

Mr. Rothschild: It seems to me that in mining, as in all other business, there are a number of highly watered plants. Those plants can only work at a profit under the very best conditions. They are a very small percentage, however, of the plants in business or in the mining world, and therefore on the question of a tax system, which is necessary to get income in these days when large sums are necessary, it seems to me too much regard ought not to be paid to that very, very small percentage of dead ones in all lines of business.

Mr. Buell: This gentleman thinks we are not going to get revenue enough. We are going to get out of our iron ore tax more revenue than in West Virginia.

Mr. Rothschild: It is not that you are not going to get revenue, but I am afraid that the political influence of a very, very small percentage of unsuccessful operations in the country is used and will be used to discredit a perfectly fair system of taxation.

Chairman White: I think that is enough discussion on that point. I think probably the rest of you are in the same position that I am; you have mining stock that has never paid any dividend. Gentlemen, your permanent chairman will take charge of the meeting.

Chairman Lord: I should like to ask Mr. Sneed if there is to be a meeting of the committee on resolutions immediately after adjournment.

Mr. Sneed: Yes, Mr. Chairman, just long enough to effect an organization, to see how near complete that committee is. I understand that all the names have not been handed in up to now.

Chairman Lord: Perhaps the secretary might read the list of states that have not reported their selection for the committee on resolutions.

(Roll call by the secretary of states who have not supplied the name of the member of the resolutions committee)

Secretary Holcomb: I have a resolution that has been handed in. It relates to bank taxation. It is submitted by C. J. Tobin of New York.

(Resolution read by the secretary)

Chairman Lord: The resolution will be referred under the rules.

Secretary Holcomb: The committee on taxation of public utilities is requested to meet at the close of tonight's session. The committee on nominations of the National Tax Association is requested to meet in this room at the end of the sixth session. That is Wednesday afternoon—tomorrow afternoon.

Chairman Lord: Are there any other announcements from the floor?

Mr. C. T. Moffett of Minnesota: I want to call attention to the fact that tomorrow at two o'clock we have provided a trip for the ladies. There are not many ladies here now, but I hope the men will tell them that we are all ready for that trip. The Minneapolis institute of arts has invited all the gentlemen and the ladies, either severally or together, to visit the institute, and all you have to say is you are from the national tax association, and that is your open sesame. The Minneapolis institute of arts is on 24th Street and Third Avenue south. We will provide some means of getting you to the building.

Mr. White: I should like to say to the members who are assembled that we all manage to catch trains on time. Most of you are public officials. Now, if we cannot begin our convention sessions at the time appointed, it does not speak very well for public officials.

Chairman Lord: That is very timely and appropriate and applies and has applied so far, to the meetings of the conference. Now, if there are no other announcements the convention will recess until eight o'clock this evening.

(Adjournment)

FOURTH SESSION

Tuesday Evening, September 19, 1922

Chairman Lord: The chair has been requested to announce that the sub-committee of the committee on resolutions will meet immediately after adjournment tonight to consider, at least in part, the resolutions that have so far been submitted. I assume that you gentlemen know who are members of this committee. Perhaps I might read the names.

(Names of committee read)

Professor Dowry of our state university wishes me to extend on his behalf an invitation to all professors of economics attending this conference to attend a smoker to be given by the school of business, in private dining room A immediately after adjournment. Possibly the dean has seen most of the college men who are here I know it will be an enjoyable occasion.

The topic for discussion tonight is one of vital importance to the State of Minnesota, and I know it must be to a great many states in the Union at the present time. The State of New Hampshire has given a great deal of attention to the troublesome question of forestry taxation, and because of this I am going to call to the chair this evening Mr. Fletcher Hale of New Hampshire, who will preside at this session.

Mr. Fletcher Hale, presiding.

Chairman Hale: Mr. President, ladies and gentlemen of the conference: I thank you, Mr. President, for the highly appreciated but undeserved compliment. Last fall at Bretton Woods, most of you remember, there was authorized the appointment of a committee to study the whole subject of forestry taxation and to make report at this meeting, and the program for this evening consists of the report of that committee and ensuing discussion thereon. The report of the committee will be presented by Professor Fred R. Fairchild of Yale University—Professor Fairchild.

REPORT OF THE COMMITTEE ON FOREST TAXATION

I. Introductory—The Present Problem

For a generation and more there have been complaints from those interested in forestry of the unfortunate effects of the American tax system upon forests and the enterprise of forestry. The

scientific study of the subject in America as a problem in the economics of taxation may be said to have started when the matter was taken up jointly by the National Conservation Commission and the United States Forest Service in 1908. The chairman of this committee was delegated by both organizations to make an investigation and report. That report appeared in 1909 as part of the report of the National Conservation Commission and a preliminary statement of the substance of it was presented to this association at its second annual conference in Toronto, in 1908. At that conference papers were read also by, Mr. A. C. Shaw of the forest service and Dean B. E. Fernow of the University of Toronto. Four years later the chairman again addressed this association, at the sixth conference in Des Moines in 1912, giving at that time some suggestions for a practical plan of forest taxation, based upon his further study of the problem for the United States Forest Service. At this meeting a committee on forest taxation was authorized, whose report was presented by the present chairman at the seventh conference, in 1913. In the same year there appeared the report of the sub-committee on forest taxation of the fifth National Conservation Congress, whose main conclusions followed substantially the principles laid down in the report of your own committee. Following this five-year period of activity, the subject has been permitted to rest for a decade, except for the report of the sub-committee of the committee on national forestry policy of the Chamber of Commerce of the United States, which appeared last year (1921). This report contains an interesting account of the state of forest tax legislation in the several states, but makes no attempt to carry further the study of economic principles. At the conference last year (1921) the subject was reopened by the paper of Professor H. H. Chapman and considerable interest was aroused, resulting in the authorization of the present committee.

It is not necessary at this time to go over the ground already covered in previous addresses and reports before these conferences; suffice it to say that the earlier study of this problem succeeded in establishing certain conclusions which may be summarized briefly as follows:

(1) That as a rule forests have been assessed far below their true value, and that, owing to this circumstance combined with lax administration of the tax laws, forests have not generally been subject to excessive taxation;

(2) That barring certain localities and some individual cases, taxation has not been responsible for destruction of the forests or for failure to reforest cut-over lands or to practice forestry. These results have been due to other causes more potent than taxation;

(3) That the property tax is fundamentally defective when ap-

plied to the total value of land and trees of a growing forest, resulting, if strictly administered, in grossly excessive taxation of forests, as compared with other forms of property yielding annual incomes;

(4) That, if at any time other conditions should become favorable to the practice of forestry as a private business enterprise, continuance of the prevailing property tax upon growing forests would prove an insufferable obstacle;

(5) That the remedy lies in the relief of growing forests from the rigors of the property tax, through the more or less complete application of the yield tax;

(6) That the attempt to promote forestry by tax exemptions, as embodied in earlier legislation, is quite futile;

(7) That the mature or virgin forest presents a distinct problem, toward the solution of which little has yet been accomplished.

Our first task now is to take stock of what progress has been made during the past decade. We note, first of all, that the principal conclusions of your previous committee, as just summarized, have stood the test of time and gained very general acceptance by those who have given attention to this subject, a result in which this association may take justifiable pride.

On the practical side of legislative achievement, the result is less gratifying. A few states have passed laws aimed to relieve the forests from the worst hardships of the general property tax, and in these laws there has been a timid application of the yield tax principle. (Note details of state laws since 1913.) But these laws have not gone to the root of the matter and they have failed to produce any important practical results. They have usually been optional, and for one reason or another have generally been ignored by forest owners.

In spite of the general acceptance of the principle of the yield tax as a theoretical proposition, there can be no doubt that the plan of the pure yield tax, as recommended in the report of the National Conservation Commission of 1909, has been generally regarded as too extreme and as involving too many practical difficulties from the viewpoint of the public revenue. There has developed an unmistakable public opinion to the effect that all forests must continue subject to the property tax, at least upon the land, and that the application of the yield tax must be limited to the trees. This position was accepted by your former committee, which in 1913 recommended for "new forests" a combination tax, consisting of an annual tax on the land, valued as bare land and taxed at a rate equal to half the prevailing rate of the general property tax, together with a ten per cent yield tax upon forest products. It is safe to say that the fundamental idea of this plan has gained general acceptance among the advocates of forest tax reform.

And yet there has been a disapointing lack of legislation along this line.

On the other hand, the need of reform has increased alarmingly and is more widely recognized than ever before. The dependence of the nation upon timber and other forest products; the rapid decline of our forest resources, and the impending future famine are subjects which this committee feels it need not enter into, in view of the presentation made by Professor Chapman at the last conference (1921). These matters are of vital interest to the nation; attention has been given them by such bodies as the United States Forest Service, the Chamber of Commerce of the United States, the American Forestry Association, etc. The present crisis is not due primarily to taxation, but the burden of taxation has grievously increased in the past ten years and the necessity of reform, to clear the way for the practice of private forestry, was never so urgent or so well recognized as today.

The committee has, therefore, set for itself the task of answering these questions: Why has the progress of forest tax legislation been so slow? . Is the plan proposed by the committee of 1913 still worthy of our recommendation? Is the lack of results to be ascribed to weaknesses in that plan? If so, how may the plan be so modified as to bring, not merely recognition of its theoretical correctness, but adoption by the legislatures of the states? In all of its inquiry the committee has had in view the same objects as were before the former committee, stated thus in its report:

"(1) It is proposed to place upon forest owners their fair burden of taxation as compared with other taxpayers. No subsidy or special favor to forest owners is contemplated. The legitimate objects of correct forest taxation may be obtained by a change in the method of taxation, without generally involving any reduction in the taxes paid at present.

"(2) The forest owner should be guaranteed that his burden of taxation will be reasonable and that its amount will bear a fairly definite ratio to the income from his forest and be fairly predictable in advance.

"(3) The various political bodies involved (states, counties, towns, etc.) should be guaranteed against any serious irregularity of income resulting from the changed method of taxing forests.

"(4) The method of taxing forests should be such as will impose no obstacle in the way of the best use of existing forests and the investment of capital in new forests. So far as consistent with the other objects stated, the tax plan should be a direct inducement to these ends."

It has become evident that the taxation of forests involves two distinct problems, relating respectively to growing forests and to

mature or virgin forests. We shall divide our following discussion into two parts accordingly.

II. The Taxation of Growing Forests

The idea of the former committee was to find a method of taxation that should take the place of all existing taxation upon forests. This meant practically to find an equitable substitute for the general property tax. It was recognized that theoretically such a substitute might be either (1) an annual tax on the original capital value of the forest—what the foresters call the "expectation value"—which practically amounts to the value of the bare land, or (2) a tax on the yield of forest products, whenever obtained. In the first alternative the rate of the tax should be the prevailing rate of the property tax on wealth in general. The yield tax, in order to impose a burden equivalent to the tax on other wealth, should be at a rate determined by dividing the prevailing rate of the property tax by the rate of interest. Thus, if the rate of interest were five per cent, an annual tax on original capital value at one per cent is equivalent to a yield tax of twenty per cent. Recognizing the practical obstacles to both of these alternatives, the former committee proposed a compromise, involving an annual tax on the land, at half the rate of the prevailing property tax and a ten per cent yield tax on forest products. This recognized the principle that a combination of the capital tax and the yield tax should impose the same total burden as would result from either of these taxes alone; hence the rates recommended.

In the opinion of your committee analysis of this plan brings to light two features to which may be ascribed its failure to gain more general acceptance. In the first place, the yield tax under American forest conditions would necessarily be irregular as a revenue producer. In spite of practicable devices for correcting this irregularity which were suggested,[1] the public and the legislatures have been extremely cautious about accepting any plan which even remotely threatens to introduce an element of uncertainty or irregularity into the local revenue system. This is undoubtedly the chief obstacle to the practical acceptance of the yield tax.

The other feature which appears as an obstacle to the adoption of the former plan is this. The plan, as proposed, was a compromise between the annual land tax and the yield tax. As such, it gave a reduced land tax, at half the rate paid by other property, to be made up later by the yield tax. This was, at the start, a concession to the forest land owner. It could be granted only where there was reason to expect the future yield tax. It was essential to make careful provision to prevent resort to the law as a means

[1] Cf. Fairchild, "Suggestions for a Practical Plan of Forest Taxation," *Proceedings of the National Tax Association*, Volume VI, 1912.

of escaping taxation on agricultural or other non-forest land. The plan therefore involved complicated provisions, seeking to restrict its application to true forest lands, limiting it to lands not exceeding a certain value, requiring that the lands be properly planted or otherwise stocked with suitable species of trees and that the young forests be properly maintained. The special forest tax was optional, to come into force only after application by the owner and inspection and approval by the state forester, and to terminate whenever the owner should desire to withdraw or the state forester should decide that the forest was not being properly maintained. All of this meant complicated procedure and red tape and has doubtless gone far to cool the interest of the forest owners in the plan.

Of course any arrangement which involves a concession in the way of reduced taxation must be safeguarded in some such way as this. Some of the earlier plans of forest tax reform involved special favors to the forest owner, in return for certain specified management of his forest, under a contract with the state. Forest owners have been very reluctant to bind themselves by such contracts and the laws containing this feature have everywhere failed to produce results. But even where there is no intention to give any ultimate favor to the forest owner, the presence of an initial concession requires some safeguard against abuse. Hence nearly every plan of forest taxation that has appeared in the last ten years has involved restrictions upon its application similar to those contained in the plan of the former committee. This is believed to have been the chief reason for the failure of all these plans to obtain more general acceptance. Your committee believes that it is of the utmost importance to develop a plan which shall be of universal application; which shall be compulsory and not optional, and which shall not be hedged about with the red tape of applications, inspections, and official sanctions.

This goal, which seemed quite unattainable to those of us who were working on the problem ten years ago, has we believe been brought within our reach by certain developments of the past decade in the general field of taxation. Two things have happened. One has been the unexpectedly rapid disintegration of the general property tax, with the corresponding rise of taxes upon incomes and earnings. The other is the development of new ideas regarding the whole system of state and local taxation, under the inspiration and guidance of the model tax committee of the National Tax Association.

These developments have greatly simplified the problem of forest taxation. The old general property tax was intolerable in its application to growing forests. The task was to find some substitute, assuming that the general property tax would long continue for

other property in general. The one great achievement of our earlier efforts was to develop the idea of the yield tax. Yet, rather curiously, the practical outcome has been not the adoption of a special yield tax for forests, but the remarkable spread of the income, earnings, or yield basis for taxation in general. While we have been struggling to secure the yield principle as a special concession to the forests, the general tax reform movement has caught up with us.

The problem of today is no longer to find a special method for taxing forests in lieu of all other taxation, but to fit the taxation of forests into a general tax system which is itself destined to rest more and more on the yield or income basis. For example, the model tax committee proposes a system of state and local taxation resting on three foundation stones: (1) the individual income tax, (2) the property tax, upon tangible property only, and (3) the business tax. The individual income tax would of course treat forest incomes like any other income. The forest owner can have no grievance here. So far as the peculiarities of his business are concerned this is the most favorable kind of tax for him. There is no special problem for us here. Likewise the business tax, where such a tax is in effect, will rest upon the income or yield basis, the one best suited to the peculiarities of forest enterprise. Some special adaptations to the business of forestry may be desirable, but at any rate the yield principle is secure.

The only problem remaining is to find a modification of the property tax which shall be suited to the peculiarities of forest enterprise. The weaknesses of the ordinary property tax as applied to growing forests have been carefully studied and the results presented in previous reports and papers before these conferences, to which reference has been made. Reference has also been made to the generally accepted remedy; namely the combination of an annual tax on the land and a yield tax. As has been pointed out, the annual tax on the land, at the rate of the ordinary property tax, is all the burden that can fairly be placed upon the growing forest. To impose an additional yield tax is excessive. Those who have proposed this have apparently had the feeling that to grant entire exemption of growing timber, without any compensation, was too great a concession or else have had in mind the mature forests, which as we shall show must be called upon for more than the land tax. As regards growing forests there is no principle either to justify a yield tax or to measure its amount, if the land is already subject to annual taxation like other property. Such an additional yield tax is justified only in consideration of a reduced rate of the land tax, as proposed by the committee of 1913.

When we were seeking a special forest tax, in lieu of all other taxes, it was felt that the annual land tax at the regular rate, paid

for many years in advance of an income from the forest, was a serious hardship. Now we are assuming that forests are to be subject to the individual income tax and the business tax, and we are seeking only an adaptation of the property tax. This is not the whole tax on forests but only a part of the system. The simple solution becomes practicable and not unduly burdensome; i. e., the annual tax on the land only, at the regular rate of the property tax, with entire exemption of growing trees. No additional yield tax is required so far as the property tax is concerned. With such a tax, there remains no necessity for any optional feature, for applications or inspections, for contracts or official interference with the owner's management of his forest. The law would apply to all lands and would simply have to provide that in assessing real estate no account should be taken of the value of growing trees.

The yield tax would appear, not as an additional tax in lieu of the property tax, but in the place of the business tax. The forestry business is fairly simple. It is doubtful if the complicated system that has been worked out for manufacturing and mercantile business is necessary or desirable for forests. The simple tax on the stumpage value of forest products corresponds fairly well to a tax on net income and would probably be the best means of applying the business tax principle to the forests. The rate of the yield tax should correspond to the rate of the business tax on other enterprises. Five per cent is suggested as a reasonable rate where circumstances do not indicate the proper rate.

We summarize our plan for the taxation of growing forests as follows:

(1) The law shall provide criteria for determining what is "mature timber".

(2) All trees other than mature timber shall be exempt from taxation, and in assessing land no account should be taken of the value of any trees, except mature timber. Forest lands shall be assessed no higher than similar bare lands in the neighborhood.

(3) All forest products (with the exception of certain small quantities taken by the owner or the tenant for his own use) shall be subject to a yield tax, at a rate corresponding to the business tax on other businesses. The rate would perhaps ordinarily be in the neighborhood of five per cent. The yield tax should be administered by state officers, and the proceeds ordinarily distributed to the towns or counties.

(4) It is assumed that if there is an individual income tax, forest incomes will be treated exactly like other incomes.

(5) Certain administrative problems will arise, particularly in connection with the yield tax. Since this matter has been fully treated in previous reports and addresses, already referred to, the committee regards further discussion unnecessary. No serious obstacle is to be anticipated.

At two points this plan may require further defense. (1) The old general property tax was defective because (a) by taxing the total value of land and trees it imposed an excessive burden upon the growing forest and (b) it placed on the owner the inconvenient obligation to pay annual taxes for years before any income was realized. The first of these defects is avoided by exempting the trees. The second remains, though greatly reduced. Under all the circumstances it is felt that this inconvenience must be accepted by the forest owner. In return he is guaranteed a reasonable tax burden, made up of a small and fairly certain annual tax on his land and a yield tax at a definite rate.

(2) The chief objection to the yield tax, as already stated, is the irregularity of the resulting revenue. This difficulty is present in the committee's plan. It should be noted, however, that the irregularity resulting from a moderate yield tax (in the neighborhood of five per cent) combined with a steady annual tax on the land is quite different from the result of an exclusive yield tax (at the rate of twenty per cent or thereabouts). If nevertheless this difficulty appears serious, there are ways by which it may be avoided. Six possible methods were suggested by the chairman in his address before the sixth conference, in 1912. It is not necessary to rehearse them here. One of these suggested methods, involving advance annual payments by the owner, to be later deducted with interest from the yield tax, has recently been taken up and skilfully developed by Mr. Murphy of the Forest Service. The committee believes that in most states the irregularity resulting from the yield tax as recommended will not be serious, whereas for any state which finds this a serious matter there are adequate remedies.

III. The Taxation of Mature Timber

Our discussion thus far has related to the growing forest only, with the purpose of devising a method of taxation which shall be equitable to all parties concerned and shall not be an obstacle to the reforestation of cut-over lands or the development of new forests. The mature forest presents quite another problem. We are here dealing with a full grown product. Two cases appear, depending primarily on whether the timber is actually marketable or not. By marketable timber we mean mature timber which is accessible and so located, with respect to market and transportation facilities, that its immediate marketing is possible. Whether it actually is being marketed depends upon the owner's judgment as to the most favorable time. There is nothing in the theory of the property tax to affect adversely marketable mature timber. A property tax fairly drawn and administered with even-handed justice upon all owners of taxable property would give the owner of such mature timber no ground for complaint. Of course the obvious

rejoinder is: "there aint no such animal". This ideally perfect property tax exists only in the imagination. The real property tax, as we know it, is badly drawn and more badly administered. Its application is unequal and unjust. If forests of marketable mature timber are taxed more heavily in proportion to their true value than other classes of wealth, the forest owners have a grievance, but it is in no way different from the grievance of any other property owner, under similar treatment.

On the other hand, when timber is so located that its present marketing is not possible, the situation is in theory similar to that of the growing forest. We have here a form of capital whose income is deferred to the more or less distant future. It is true that the timber is mature, but if other causes beyond the owner's control defer its marketing, the result is the same. It is the fact of the necessarily deferred income, rather than the particular cause of that fact, which makes the annual tax on capital value work injustice. The reasoning in support of this conclusion has been presented heretofore in other reports by the chairman.[2] There are in certain parts of the United States large forest areas containing mature timber whose location is so inaccessible or so remote from markets or transportation facilities that its marketing is now and may long continue to be a physical impossibility. To collect from such forest capital an annual property tax, assessed upon the true value from year to year, places an excessive burden upon the owners. This result is inherent in the nature of the property tax and not (as in the case of marketable timber) due to faulty wording or administration of the law.

Careful investigation made ten to fifteen years ago, to which reference has been made, showed that on the whole, forests had not up to that time been taxed excessively. Probably they had, on the whole, been assessed more leniently than other classes of wealth. But it was pointed out at that time that the epoch of lenient taxation was drawing to a close and that heavier and even excessive taxation might be expected in the near future. The past decade has fully justified this prophesy. Tax burdens in general have become enormously heavier, and there is plenty of evidence to show that in the great virgin timber states at least the burden has been increasing more rapidly on timber than on other wealth. The owners of large tracts of mature or virgin timber have reason to be alarmed.

What makes the matter one of public interest is this: The mature forests represent a national resource of vital importance to the well-being of the people. This store of wealth has been gradually built up by nature during many past years. Its utilization has

[2] Cf. *Report of the National Conservation Commission,* 1909, Vol. III, pages 611-615; Fairchild, "Forest Taxation," *Proceedings Nat'l Tax Conference,* 1908.

for some time been proceeding more rapidly than its restoration by natural growth and plantation. The store is diminishing and virtual exhaustion may be foreseen in the not distant future. It must be repeated that taxation is not the cause of this condition and that no change in tax methods will materially alter the situation. This is not primarily a tax problem. Taxation becomes a consideration in one way only. If, through the faulty administration of the property tax, mature timber is subjected to an excessive burden of taxes, the owner, already burdened with heavy carrying charges, may find himself forced to market timber before the economical time, suffering loss himself and hastening unduly the depletion of the nation's forest resources.

Of course, by this same token, the forest owner would benefit and the exhaustion of the forests be perhaps retarded by special favors in the way of reduced taxes or entire tax exemption. But this is a program which your committee has refused to consider, standing firmly on its purpose to find a tax system which shall place on forest owners their fair burden of taxation—no more but also no less—as compared with other taxpayers. It is not believed that the public interest as a whole has anything to gain through the granting of special tax favors to this class of taxpayers.

On the other hand, the forest owner is entitled to fair treatment. He has the right to ask two things: (1) that his total tax burden shall not be excessive, as compared with other taxpayers, and (2) that the amounts exacted from him shall not be arbitrary and uncertain. The latter consideration is possibly even more important than the former. It is especially vital to the forest owner whose income may be long deferred, while interest and other expenses run steadily on. There is danger that the just taxation to which the forest owner is entitled may be denied him, either through the inherent defects of the property tax as applied to forests whose cutting is necessarily deferred, or through the assessment of marketable timber at values relatively higher than are placed upon other taxable wealth.

The problem of taxing mature timber has not received the study which has been devoted to the taxation of growing forests, and the solution is not so obvious. The former committee (in 1913) made certain tentative recommendations, while admitting frankly that it was not prepared to say that its plan would fit the conditions in those states of the Pacific coast, the south, and the extreme northeast where the most extensive areas of virgin forest are found and where the problem is most serious. The sub-committee of the National Conservation Congress also made suggestions, likewise somewhat tentative.

In seeking a solution, your committee starts with these principles: (1) Mature timber should be taxed so far as is equitable and possible on a par with other wealth and business. (2) If there

is an individual income tax, it should relate to forest income the same as any other income. (3) Where there is a special business tax, it should take the form of a yield tax for forest enterprise. These principles are the same as have been recommended for growing forests and their discussion in that section applies generally here. (4) The property tax as applied to marketable mature forests should be the equivalent of an annual tax upon the land and trees, assessed in the same ratio to true value as prevails for other taxable property in general, and at the same rates as are applied to other wealth. (5) The property tax, when applied to forests of mature timber which will not be marketable till some time in the future, should take account of the fact of defered income.

It is the practical application of the last two principles which presents the difficult problem. As has been pointed out, the owner of marketable mature timber has no reason to complain if the property tax is applied to his forest on even terms with other kinds of property, but this is not enough for the owner of unmarketable mature timber. Yet the legal separation for taxation of these two classes of mature timber is probably impracticable. There would be too much of personal judgment involved, and disputes and unequal treatment would almost certainly follow. What we must seek is an equitable method of applying the property tax or its equivalent to all mature forests.

From the point of view of the forest owner, the most favorable solution would probably be the pure yield tax, but the pure yield tax will not do, for two reasons at least. (1) The owner of marketable mature timber, who chooses to hold it uncut, for sale in the distant future or as a pleasure park or hunting ground, must not be permitted thus to postpone his tax contribution indefinitely or avoid it altogether. (2) The resulting irregularity of public revenue would be a serious matter, especially in those localities where virgin timber composes a large part of the taxable wealth, these being the very communities where the problem of the taxation of mature timber is most acute. As has been observed heretofore in this report, there are ways of adjusting this irregularity of revenue, but nevertheless the public appears unwilling to take the chance. There are other serious difficulties, both theoretical and practical. We are quite safe in concluding that the pure yield tax is not the solution.

The combination of an annual land tax and a yield tax meets about the same objection. The principal value of a mature forest is in the timber rather than the land. Introduction of the annual land tax, therefore, fails to meet the objections to the pure yield tax. At best it mitigates them slightly.

Taking everything into consideration, your committee is of the opinion that the only practicable solution of the problem of taxing mature forests is to seek to make the property tax as equitable and

convenient as may be. In particular every effort should be made to insure a fair assessment of forest property. This means not only an accurate valuation; it requires also that the assessed value of forest property shall not bear a higher ratio to its true value than the prevailing ratio of assessed valuations to true value of all taxable property. Assessment at the hands of a state officer or board would doubtless assure uniformity and certainty in the assessments. There is always the danger, however, that such efficient assessment, by arriving at the true value of forest property, will unjustly burden such property, as compared with other property not so efficiently assessed. Equality in taxation must be real equality, not merely formal.

It is admitted that this solution is more favorable to the forest of marketable timber than to that which is for the present not marketable. But the committee has thus far been unable to discover a practicable means of reconciling this discrepancy. As a matter of fact, the inequality would probably exist more in theory than in practice. It is hardly to be supposed that the assessors would take pains to raise the assessment of unmarketable timber each year, to take account of the approach to the date of cutting, the possibility of this being what makes the property tax unjust to such forests. If the assessors seek honestly to value all mature forests on the same basis as other taxable wealth it is probable that little injustice will be done. If such treatment could be guaranteed, the owners of mature timber would probably have little reason to complain.

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SEPTEMBER, 1922.

CHAIRMAN HALE: Following Professor Fairchild's appropriate suggestion and believing that you will all be much interested to hear from him, I take the liberty, without notice, of calling on Mr. L. S. Murphy of the United States forest service.

MR. L. S. MURPHY, of the United States forest service: Ladies and gentlemen of the conference: I should like to ask Professor Fairchild whether or not this report is a progress report and whether the committee is going to continue to wrestle with the problem of devising a suitable law to carry out their ideas, or whether this is a final report. I hope it is not, because the worst is yet to come, I fear. How about that?

PROFESSOR FAIRCHILD: Mr. Chairman, I think all I can say to Mr. Murphy is that the answer to that question rests with this conference and this association. I presume if it is sufficiently urged, this committee would be willing to undertake the burden of carrying this matter further, and I am quite frank to admit that there is plenty still to be done, but whether we will do so or not is a matter outside of our control.

MR. MURPHY: It seems to me it has been carried to a point where it would be unfortunate to allow it to stop where it is. There is need to formulate these ideas which have been incorporated in the report, and which I think we all agree are very excellent, and to get down to some such status as the model tax committee has, and add to the program practical bill-drafting. I notice whenever I am called on, on occasions of this sort, I am always asked to get down to bill stages, if possible, and those are hard stages to get down to.

It seems to me that one of the most encouraging things of Professor Fairchild's report is the fact that after having been—well, you might not say out of touch, but at least he has been interested in other things very much more than the yield tax, for several years—he now comes back and finds that we have made progress. Although his note of legislative progress is not very encouraging, it is encouraging to know that the principle of separating the value of land and timber, and taxing the timber on some sort of basis at the time it is cut, has gained wide recognition. The report covers the field so fully that without going over much of the ground again, there is not much to be discussed.

It might, however, be well to point out one or two things. We all know that the general property tax is still in many states the only real tax that is available. It has in several of these states not been breached in any way. Some of the other states have gone a step further and provided for the classification of property, with a uniform rate of tax for a definite class. One state, Michigan, has changed in a different way. While adhering very closely

to the general property tax, it has allowed its legislature to cut out its field of specific taxes, and thus escape in a certain measure the rigors, we might say, of the general property tax; and lastly, some of the states have gone to the extent of allowing income taxes.

Now, Professor Fairchild's paper, the report of this committee, stresses the possibilities of developing the yield tax under this more favorable aspect of the income tax. He assumes that we can hit it at three points, the personal income tax, the property tax, and a business tax. It still leaves to be considered how we are going to get at relief of the timber land owner in those states that do not authorize the income tax. I hope that we may hear later from Mr. Barnes, a former member of the tax commission in Michigan, who has a very interesting plan dealing with the special Michigan aspect of taking the forest tax problem out from under the general property tax and treating it entirely from the standpoint of specific taxation. That still leaves the situation where we have forests under general property taxes and there is no authorization to classify property. There does not seem to be any possible way of relieving the timber land owner from the difficulties that Professor Fairchild has pointed out with reference to the general property tax. Where, however, we have the authority to classify property, as we have in Minnesota and in several other states, there is an opportunity to work out a plan of a substitute property tax. It is possibly in many ways the most difficult field to which to attempt to apply the yield tax principle. One of the chief difficulties of a practical nature that we encounter is that of the assessment of property, because under the general property tax all property must be assessed. The one principal way of meeting that difficulty seems to be to place the assessment of forest property directly on the state. Now, that means, of course, a good deal of opposition from the local community. It runs considerably counter to the home rule aspect of taxation on general property. But, nevertheless there seems to be no other way out of the difficulty so far as the general property tax is concerned. And in connection with the assessment, it seems as though it were necessary to adopt a state land policy.

You may recall that last year Professor Ely discussed the subject very fully of an economic survey which undoubtedly would underlie a state land policy, and which would tend to insure a proper use of different classes of land, classified under certain economic use classes. I possibly can illustrate what I have in mind by referring to the situation that we are all familiar with of agricultural land in the vicinity of cities being taken out of the agricultural use, in the anticipation of being cut up into house lots and subdivisions. Probably a great many years intervene in many cases during which this land performs no economic function.

We have an exact duplicate of that in the wild land sections, where forest land and cut-over land, in anticipation of being cut up into farm units, is allowed to lie fallow and not perform any economic function. The war brought out the possibility of reviving the economic function of agricultural land in the vicinity of cities, through the war garden, and while that was not a total success, it was much more of a success than it would have been possible to develop in an attempt to relieve a timber famine by utilizing these lands that are being held in anticipation of conversion into agriculture. We cannot grow timber crops in the same length of time as agricultural crops. We have to go at it premeditately, and it seems to me that the fundamental thing to provide for is this economic survey and the studying of conditions which will remove the uncertainty from the mind of the timber land owner as to whether he will continue to use that property productively to raise timber, until the economic demand actually arises for that land to be converted to agriculture. If we can work out some solution along that line, it will go far toward helping out our tax problem and our forestry problem also.

Chairman Hale: If Mr. Barnes is present, I take pleasure in calling on him at this time for such remarks as he may care to make.

Mr. O. F. Barnes of Michigan: Mr. Chairman and gentlemen of the convention: I don't know as I am qualified at all to discuss the paper that has been given us. A man who would attempt to discuss a paper of that character, without days of study, would be on dangerous ground. I will, if you will give me just eleven and one-half minutes, take pleasure in reading to you a synopsis of what I presented to a conference of the Michigan state forestry association and the state conservation department, in which the topic was that of forestry taxation, and the problem in our state, where we have hundreds of thousands of acres of land that is today economically worthless and never will be worth anything except through reforestation, and that reforestation must take place through natural reproduction.

What I have prepared today, after talking with Mr. Murphy and obtaining some ideas from him, I dictated, and I will read it to you in the few minutes I ask of your time. I will promise you that it is so very condensed that you may not be able to get anything out of it.

PROPOSED SYSTEM OF FORESTRY TAXATION

O. F. BARNES

Forest property is a long-time investment and, as an investment, differs radically in its income-producing features from most other forms of investment and is particularly burdened by prevailing methods of taxation.

The most important consideration with respect to every long-time investment is — what will be the future cost of carrying the investment? Any uncertainty as to future carrying charges invariably outweighs promises of large profits. Uncertainty as to the future cost of carrying a forest property investment is very largely a question of taxation.

Ad valorem property taxation inflicts greater hardship upon property not yielding a regular income, or where income must be left to increased capital than it does upon property yielding a regular income. In the case of forest property the non-income-producing period may extend over many years.

Ad valorem property taxation applied to forest property necessarily results in over-taxation of such property, as compared with other forms of real property.

Standing timber in all essentials can only be considered as a crop, and like the wheat crop or the corn crop, has no economic value until severed from the soil. Theoretically, therefore, and as a matter of justice, land devoted to a timber crop and land devoted to a farm crop should be affected in the same way by just and equitable taxation. This is impossible when both classes of land are subject to unmodified ad valorem taxation. The wheat crop or the corn crop matures and is separated from the soil annually. The growing and maturing of a timber crop is a matter of years. The annual farm crop provides income with which to pay the annual tax. During the maturing of a timber crop there will be many tax rotations with no crop furnishing income from which to meet them. The unsevered farm crop in practice is never taxed, and its presence in any state of maturity has no influence on the annual taxation of the land producing the crop. A farm may be cropped and taxed under the ad valorem general property tax system for fifty years and during that period no growing crop would be taxed and no assessment increased because of the growing crop. The assessment of the farm for taxation would simply be the income-producing capacity of the soil, capitalized. In determining the assessment for taxation purposes of land devoted to a growing timber crop, the assessing officer annually capitalizes the crop-producing capacity of the soil and also whatever progress the timber crop has made toward maturity In determining the assessment for taxation of a mature forest, where nature has established

a balance—growth and decay equalizing each other—ad valorem taxation annually capitalizes the crop-producing capacity of the soil and the entire income that will be produced. In both cases the result is, comparatively speaking, continuous over-taxation.

The economic effect of increased taxation upon forest property is far different from the effect of increased taxation upon other forms of real estate. It forces destruction, not development. If taxation is increased on non-income producing city property the owner can improve the same and thus obtain income to meet the increased tax, and in so doing he benefits both himself and the community. If taxation is increased upon non-income producing farm lands the owner can put the same under crop and obtain income to meet the increased taxation, again benefiting both himself and the community. The owner of forest property, however, when taxation increases, can obtain income from the property to meet such charges only by destroying the property.

Forest property, therefore, as an investment, differs so in character from other forms of real estate investment and is so adversely affected by annual ad valorem taxation that cessation of premature and wasteful cutting of mature forests and profitable reforestation of cut-over lands depends absolutely upon modifying our system of taxation.

Many states have recently enacted legislation for this purpose, but study of these laws, in almost every case, discloses that legislators have failed to recognize either the economic principles that control long-time investments or the fact that ad valorem taxation of timber lands invariably results in over-taxation. Law-makers in most states have not been confronted with vast areas that must be reforested through natural reproduction of forest growth, if reforested at all, and they have aimed not so much at developing an equitable system of forest taxation as at encouraging the practice of forestry through special favors. A just and enduring system of forest taxation cannot have for its basis special favors to the owners of forest land. That class of property must, in the long run, pay a total of taxes equivalent to that paid by other classes of property of equal value. What should be done in framing forestry taxation is to take into account the particular character of forest property and the destructive results of certain forms of taxation upon it and frame tax laws in harmony with such character and conditions.

I suggest as basic principles of forest taxation:

First — That forest property must not, through ignorance of its character and of the effect of ad valorem taxation upon it, be over-taxed.

Second—That taxation be so framed as to enable the investor in forest land to calculate with reasonable certainty his future tax

burden until such a time as he can realize income from his investment.

Third — That the payment of taxes be arranged, as far as possible, for a time when income may be expected with which to pay the tax.

Fourth — That the interests of the owners of other classes of property and the interests of the political units where forests are located be given proper consideration.

The particular form of taxation that is most frequently urged is: Exemption of land and timber from the annual ad valorem general property tax and the substitution therefor of a percentage tax upon yield, payable whenever any part of the crop is harvested.

The substitution of a percentage yield tax for all other taxes would be the simplest solution of the problem but it does not meet the fourth requirement: "That the interests of the owners of other forms of property and the interests of the communities in which forests are located must be given due consideration."

The yield tax necessarily implies an irregular local revenue from all forest property, inasmuch as there would be no revenue from such property except when there was harvesting of forest products; and in districts where forests constituted any considerable portion of the taxable property, failure to receive any annual revenue from such property would work hardship. Again, the unmodified yield tax is open to the objection that forests are not all alike but vary from newly established growing forests, containing no merchantable products, to mature forests of virgin timber that may be harvested with profit. There is rarely any dividing line. There will generally be found some merchantable forest products upon cut-over lands and there will be much immature growth in virgin forests. Again, the uses for forest products are so varied that what is immature and useless for one purpose may be matured and useful for another purpose.

We have declared it fundamental to correct forest taxation that immature forest growth shall not be subject to annual ad valorem taxation while coming to maturity. On the other hand, there is no economic justification for exempting from annual taxation mature forest growth that can be made to yield income. It is equally fundamental that land shall not be exempt from annual taxation, because devoted to any particular crop. The interest of those owning other kinds of property and the interests of the political units, where forests are located, demand that some annual revenue be contributed by forest property. The principle that all property must, in the long run, contribute equally to public expenditure is not violated by deferred taxation such as a yield tax, providing the yield tax is so administered as not to impose double taxation. We cannot satisfactorily classify forests but we can, where land is

devoted to forestry, determine the value the bare land would have and the value of mature forest products on such land and use such values for determining an annual tax upon land and an annual tax upon mature forest growth. With these suggestions in mind, we can so modify the yield tax that fundamental requirements, such as prevention of over-taxation and double taxation, no annual taxation of immature forest growth, and certainty as to future taxation costs, may be preserved and payment of the greater part of the tax which forest property should eventually pay, be arranged to come at a time when income can be derived from the property, and at the same time some regular annual revenue from forest property be provided for the use of the local political units.

The formula for a yield tax, modified in harmony with the above suggestions, would be as follows:

Determine separately bare land value and merchantable timber value; bare land value to be the same as the assessed value of wild, unimproved bare land of similar quality in the same locality; merchantable timber value to be the stumpage value of merchantable forest product upon the land; immature forest growth not to be considered in determining either land value or merchantable timber value.

An annual tax at a fixed sum on land value thus determined.

An annual tax at a fixed sum upon merchantable timber value thus determined.

A percentage tax upon yield, payable whenever any of the merchantable forest products are harvested; but no yield tax to be imposed until forest products to the amount of the original appraisal have been harvested.

Land value not to be changed, except after regular fixed intervals and then only for the purpose of harmonizing such land value with the assessed value of bare lands in the same locality.

Timber value not to be increased at any time but to be decreased, as merchantable forest products are harvested; such decrease to be the stumpage value, at the time of harvesting, of the forest products removed from the land.

This combination of a fixed annual land tax and a fixed annual mature timber tax and a yield tax is logical and just. It prevents over-taxation, by not allowing taxation of immature forest growth. It prevents double taxation, by providing that no yield tax shall be paid upon forest products that have been subject to the annual merchantable timber tax, until the merchantable timber value as originally fixed has been extinguished by cutting. It both encourages and enables the owner of mature forests to delay cutting them, by fixing the future tax burden upon such lands and preventing any increase in such fixed charge. It meets the requirements that

the investor shall be in situation to calculate with reasonable certainty the future cost of carrying his investment, by fixing both the rate of taxation and the valuation upon which it is to be computed. It protects the interests of the owners of other classes of property and the interests of the local community, through the annual land tax and mature timber tax. To fix for a term of years the amount of the annual land tax, basing it largely on what such land is now paying, is no injustice, because the greater part of the land that would be made use of for forestry would be, at the time of coming under the new system, cut-over and waste land, paying a small tax, and, because of conditions that generally operate upon waste land when unoccupied and unprotected, would, in most cases, remain waste land, with little new growth that would add to its value and increase the tax. Under such conditions, to continue the tax at practically the same amount after its dedication to forestry would be no injustice.

The provision that where a valuation had been determined upon for the taxation of mature timber, such valuation can be gradually reduced and eventually extinguished, through the harvesting of mature forest products, creates the most practical opportunity for establishing and maturing a growing forest. By harvesting at any time such portion of the merchantable forest products as will equal in value the timber valuation as originally determined, the mature forest will automatically take on the status of a growing forest, with no timber valuation to be taxed; and this regardless of the fact that because of the growth of what was immature at the time of the valuation and because of a natural increase in the value of products, there might be almost as much actual timber value remaining as there was at the time of the appraisal. From that time on a timber crop can be harvested at regular intervals and the only annual tax will be upon bare land value.

It is not necessary to discuss rates of taxation under such a system. The question of administration, however, is a matter of the highest importance, especially the determining of bare land value and merchantable timber value. Such valuations, because not subject to change over a period of years, must be correctly determined and made as uniform as possible throughout the state, and this cannot be done by local assessors. The board of state tax commissioners should administer this feature of the proposed system, and they should also determine the stumpage value of forest products harvested, and with that information in their possession they would also determine when original merchantable timber values, subject to annual taxation, had been extinguished.

In studying the systems of other states I have found that no matter how carefully and correctly forest taxation laws may have been framed they have accomplished little, because the land owner

has had to elect to come under such laws. If all land more valuable for forestry than for other purposes were automatically placed under the proposed forest taxation law, and the land owner had to elect to withdraw his land or have it permanently classified as forest land, the situation would be far different. In Michigan the conservation department of the state has a bureau known as the Economic Soil Survey Bureau, and they are taking up county after county, and classifying the land. They have one class in which they place all land which they consider more suitable for growing forests than for agriculture, and it is suggested that the proposed law automatically apply to lands they have so classified. Inasmuch as this survey cannot be completed for several years, it is also proposed that individuals may offer their lands for classification as forest land before they are considered by the Economic Soil Survey, and if the lands so offered are approved for forestry purposes by the conservation department, they also would come under the proposed law. It is recognized that many land owners may prefer to make other use of their property, even though it has been classified as more suitable for forestry than for any other purpose. The opportunity, therefore, should be given such land owners to apply to the state tax commissioners and have such lands removed from classification as forests. But in case such application is not made within a certain period, such land will be considered permanently classified as forest land, to be removed from that class only on payment of a proper fee, based upon the number of years it has been so classified.

The question as to how taxes paid on forest property should be distributed has much bearing upon the success of such a taxation system. If, out of the annual land tax, an annual tax upon merchantable timber, state and county taxes should first have to be paid, the portion remaining might not be sufficient for local requirements. To remedy such a situation, it has been suggested that all the annual land tax and all the annual merchantable timber tax should go to the townships and school districts, where forests are located, and that the yield tax be distributed on some percentage basis, between the state, the county and the school district.

Mr. Barnes continuing: If any one has any questions, I will be glad to answer them so far as I can. Our situation up there is so different from what it is in other states. With the great mass of timber land we must find some way by which we can make it an inducement for the owners to reforest, and therefore we have considered that we must find some way by which it can automatically become forest land, and that the getting out of that class was upon the owner, and if he did not do it, it remained there. In the valuing of these lands the state board would hold a review just the same as of other lands, and if a community thought at any time it

should be revised, it would be within the power of the community to petition the state tax commission to give them a re-appraisal, or even if conditions had changed so that such an appraisal ought to be made to bring it in harmony with other lands.

CHAIRMAN HALE: The meeting is open for general discussion.

MR. W. P. WHITE: Do you find in New Hampshire that land with cut-over forests is sometimes deserted and left to go to waste?

CHAIRMAN HALE: Yes, sir, we do.

MR. WHITE: What do you do in that case?

CHAIRMAN HALE: It has been our experience that it has been stripped and stripped clean. Some seven or eight years ago we enacted a law which provided for replanting of forest lands with not less than twelve hundred trees to the acre, and it gave the owner a rebate. It is a graduated rebate, so much for the first ten years, and so much for the next ten years, on his taxes, but we have found that little advantage has been taken of the law, and that it has had practically no effect whatever in the reforestation of the state.

MR. WHITE: What do you propose to do about that, because that is a distinct menace to the civilization that we are now laboring under. If those hills become bare the districts below them will be flooded and we shall have no trees.

CHAIRMAN HALE: Of course the federal government has taken over thousands of acres in the White Mountain region. The matter of timber taxation has been before the people of New Hampshire for several years, and been presented within the last ten years three times to constitutional conventions and submitted to the people for authority to the legislature to classify or handle timber as it pleased, but the people have turned the amendment down each time.

MR. F. H. VANDENBOOM of Michigan: I have been very much interested in the matter discussed by Messrs. Fairchild and Murphy and Barnes. The question arose as to why they had been so slow in making progress in taking care of timber lands. My observation has been that the man who has been looking for some change in the assessment of timber lands has been unfair, in asking too much, and therefore did not get anything. I heard this matter discussed before state associations and usually they have asked for the taxes to be eliminated, and if that were the case, what would happen with the surrounding properties? I notice the drift of the paper tonight is along fair lines, and I was glad to see Mr. Fairchild bring this out, because I think that what has delayed action by the legislatures is that where they have an idea that they have

been overtaxed, they have asked that the entire tax be removed, which would be utterly impossible. I have been an assessing officer for some fourteen years, and for four years chairman of the committee of taxation of the Michigan senate, and we know that when people start out and are not fair, they may get somewhere for a time, but on the whole they really don't get anywhere. While they talk a good deal of fraud and every man taking his price, and all that nonsense we read about and hear about, I still don't believe it. I find a lot of men stand on general principles of honesty and fairness, and I believe that the forest question can now, if it has gotten down to an idea of honesty and fairness, receive honest and fair treatment by the legislatures, because I believe that is the point that is going to win. I for one am very much interested and am very anxious to see something done towards reforestation, and I have always been very much opposed to the idea of the slashing of timber, such as we have had in Michigan. I have seen illustrated through pictures and otherwise, how they handle forests in foreign countries, and I see what they are doing in this country. Up in northern Michigan they certainly have been slashing, and I hope that some law will be brought about sooner or later through the government to prevent this slashing and this waste.

A few years ago we talked about an awful shortage of fuel, and they talk about it now again, and yet there are thousands and thousands of acres of good wood going to waste in the forests just because the other fellow took off the best and left the rest. Not only that, but it is a breeding place for bad forest fires, and helps to destroy much very valuable timber. So, I would say to the timber men, if they are looking for concessions, don't ask for the whole thing, and that the tax be all taken off, but ask for what is right and fair, and don't go around mumbling and come before the legislature and ask for twice as much as you expect to get, and then expect that you are going to get just what you ought to have, because that don't always work out. We have found that the man who has come out fair and square, shows that he has a complaint to make, and makes it fairly and squarely, and asks for just exactly what he ought to have, has a much better chance of getting it than the fellow who asks for twice what he ought to have.

Mr. White: Have you any waste land in Michigan that the forest has been cut off and then been deserted, nothing done with it.

Mr. Vandenboom: Yes.

Mr. White: What are you going to do about that?

Mr. Vandenboom: Well, we haven't done very much about it yet. There is another thing about this forest land. In our country where the forest is far from a market, we have never assessed it as timber land, and where it is simply scattering timber of some

value, we have never assessed that as timber land, and the timber man immediately upon cutting his will write the assessing officer and notify him he has cut this timber off and ask for a reduction of taxes, when the taxes were never put upon a timber value at all. So there again they have not acted fair on the timber question, because this land is taxed the same as the farm land next to it, and we have not figured that the timber was an improvement value, because of the lack of either a market or a sufficient quantity of timber to be called timber land, but immediately after cutting it off they ask for a reduction of taxes.

We cannot get anywhere by reducing taxes where taxes can be collected. We have trouble enough in collecting taxes where they are collectible. The only trouble with our tax system is that there are too many people howling for clemency. If everybody paid his fair share there would be no trouble about this particular tax question. This is somewhat away from the subject. We talk a great deal about the state tax, and when you mention tax they refer to the state tax immediately. One man in Michigan pays more taxes to the government for the privilege of doing business in Michigan than the whole state tax amounts to. Henry Ford's federal tax was over twenty millions, and it only takes twenty millions to run the whole state of Michigan. Why worry about it?

Mr. C. J. Buell: I want to raise a question that is intimately associated with this matter. The gentleman informs me that in the State of Michigan the state does not now alienate any timber land that it may be the owner of. I believe it has been the policy of the State of Minnesota for some years back, that if the state owns the land, it does not sell it, it keeps it. Now, here comes another question: There is in the State of Minnesota a good deal of cut-over land that has been allowed to revert to the state, because the owner thinks it is not worth while to pay the tax. Now, if I understand it rightly, in the State of Minnesota we have no provision by which the state shall become the absolute owner of such land. Am I right about that, Mr. Lord? In the State of Michigan they seem to have such a provision, that if the owner does not redeem his land from the tax sale within three years, that the state becomes the owner of it. Now, I want to suggest that it would be a wise thing for the legislature of Minnesota to adopt a system of that same kind, so that wherever the owner of cut-over land refuses to pay his tax, and it reverts to the state for non-payment of taxes, that at the end of two or three years the state shall become the absolute owner of that land. Then the state will be able to go ahead and adopt a system of reforestation on such land and in harmony with the general state policy of not alienating any of its timber land. Of course we do not in this state alienate any of our mineral lands either, so that it seems to me in the case of both

timber and minerals, where the owner does not pay up his taxes promptly and it reverts to the state, that the state could provide some means of becoming the absolute owner of the timber and minerals as quickly as possible. I don't know how that would meet the approval of other gentlemen from other parts of the country.

MR. WHITE: In respect to the desertion of land, do you not feel that the owner of land does not attempt reforestation simply because of the prospective danger of being excessively taxed on it before he can reap a crop?

RESPONSE: No, that is not true.

MR. WHITE: Isn't that the danger? No one cares to invest his money in reforestation where it will take forty or fifty years to grow a crop, because he feels that the local tax assessors will tax him so he will never get any return.

MR. BUELL: There may be something in that, but under the general policy of the state retaining its timber and its minerals and not selling them, it seems to me we ought to encourage the state to get absolute possession as soon as possible wherever a man abandons his land.

MR. WHITE: Is it the policy of the state to reforest that land, to go to work and develop the land as forest land?

MR. BUELL: That would depend on other conditions, of course.

MR. WHITE: I remember distinctly of cruising along the coast of Michigan, up in the vicinity of Bay City, and I saw stumps there that represented wonderful forests, deserted now. There was no reason that that land should not be put into timber again, except as I feel, the danger that comes from local taxation when a crop is growing and people want some money.

PROFESSOR FAIRCHILD: It seems to me that we are in danger of getting away from the discussion of the point before us tonight. We are not concerned here with problems of state forest property or alienation of abandoned tax lands; the question we ought to discuss here is the practical problem of how you are going to tax forest lands in the future, and I hoped that we might get down to brass tacks and have some discussion of that. There are a good many people here who are practical tax men and I hope timber men, and they must have something to contribute to this practically definite question. To make it specially concrete: Has this committee gotten down to the right idea, and if not, there are men here capable of suggesting where we are wrong, to set us right, and I personally hope very much we may get out of this meeting something that will carry us along further toward the solution when we get going.

Mr. J. G. Armson of Minnesota: I have been very much interested in Dr. Fairchild's interesting and able discussion of forestry taxation and in Mr. Murphy's comments, as well as Mr. Barnes', but there seems to be one phase that has not been discussed. In view of the fact that the reaping of the harvest is so deferred, that if you are planting for reforestation you must wait twenty, thirty, forty or fifty years to reap a crop; whether after all the function of reforestation is not one of state interest rather than individual interest; whether in view of the deferred reaping of the crop, you can interest private capital in reforestation, or whether it should be a state proposition; and I should like to ask Dr. Fairchild—because I don't think there is any man in the United States who has given greater or more intensive study to forest taxation than Dr. Fairchild—I should like to ask him whether, after his study, covering a great many years, he does not think reforestation is a state proposition rather than an individual proposition.

Professor Fairchild: I don't know that I am especially competent to answer that question, but I have no hesitation in saying that in many cases where forests have been cut off it is not profitable to private enterprise, under conditions as they now are, to reforest and develop a new crop yielding an income forty, fifty or sixty years hence. Where that is the case, if you are going to have reforestation at all, it must be a government policy, state or national, as the case may be.

You are all familiar with the fact that both the national government and many of our state governments have already launched out into quite an extensive program in that direction; but it seems to me that that really is not a tax question. You cannot make private enterprise go into forestry by any kind of a tax policy if it is not profitable anyway. As this tax business looks to me, we ought to make the tax system such that in case it is profitable for private enterprise to reforest cut-over lands or to handle conservatively existing forests, our tax systems will not stand in the way, and to do that I don't believe you need to give exemption or special favors or concessions of any sort. If you do give those exemptions and concessions you won't accomplish anything. It has been thoroughly proved by twenty or thirty states in twenty or thirty years' experience that that sort of thing don't work. All you need to do is to get fair, equitable taxation, which shall not be excessive in amount, and which shall be so reasonably applied that it will not be a burden to the peculiar business of forest growing. That kind of a tax system won't make forests grow where they are economically unprofitable; but, on the other hand, it won't be an obstacle to the development of forests where private forestry is an economical possibility. And there is the tax problem. The other case, where a forest won't grow under any circumstances, is not a

tax problem. That is a problem of state policy as to forests. In European countries where this whole thing is far more advanced than it is with us, private forestry is on a sound business basis. It is managed profitably, and communal forests are managed with great profit under a system of taxation which does not give them any special favors at all.

If we as a tax committee can contribute toward devising a tax system which shall be a stimulant to forestry, where that is otherwise economically possible, I think we shall not only be doing all you can ask of us, but we shall be making a contribution of tremendous importance. That is the practical problem we have to solve, to get to brass tacks and bring together the practical men who know the tax business and the practical men who know the forest business, with a few of us academic theorists to mix in with it.

Mr. Armson: Professor Fairchild, if you will let me ask you another question. Minnesota, like Michigan, has a large area in the north and northeastern parts of the state perhaps better adapted to reforestation than to agricultural purposes. I should like to ask Dr. Fairchild, in view of the intimate study he has made of the question, if any state in the Union has yet made any substantial progress in reforestation, and, if not, if the tax system has prevented the development of such reforestation?

Professor Fairchild: You mean state reforestation—by the state government?

Mr. Armson: Where it is state and local taxation, not federal.

Professor Fairchild: You mean development of state-owned forests?

Mr. Armson: No, reforestation, whether state owned or privately owned.

Professor Fairchild: Of course with the state-owned forests, taxation has nothing to do with the problem at all.

Mr. Armson: Absolutely nothing, but privately owned lands: Has any state yet developed a system of reforestation, whether it be Massachusetts or Michigan or any other state?

Professor Fairchild: Again, Mr. Armson, I shall have to insist on asking you whether you mean a state policy of state ownership or private ownership?

Mr. Armson: No, private ownership under state laws, whether it be the exemption or partial exemption or an output tax or a tax on production.

Professor Fairchild: No, there isn't the slightest question as

to the fact there, that no tax program that any state has heretofore inaugurated has had any appreciable effect whatever on the reforestation of cut-over land.

They have been going off on the wrong tack entirely, on the matter of exemption and bounties, and this thing and that, tied up with contracts with the forest owner, tied up with one thing and another. All that has made those laws entirely futile. Now, what would have happened if those laws had been drawn up with all wisdom is of course more or less of a theoretical question, because that is not the question of laws we have had. Personally I am thoroughly convinced that the thing which has prevented reforestation of American forests has not been taxation. I don't hesitate at all to say that—I have been saying that for the last ten or fifteen years—but other obstacles have been so much more important.

Mr. Armson: What do you mean by other obstacles, doctor?

Professor Fairchild: The simple fact that economic conditions in this country have not made it worth while for the owner of timber lands to cut off his lands and then go to the expense and trouble of laboriously reforesting. It has been economical to pass on to the virgin forests and carry on the process of cutting. And furthermore, you can name one single thing which is inevitable and is so vastly more important than taxation that it is idle to lay the burden on taxation — and that is interest. Simply figure up compound interest at any rate you please for fifty years, and the worst system of taxation that we in our wisdom have ever been able to devise is a small matter compared to that one thing alone. So, there is no hesitation in saying that taxation has not been to blame for the lack of an established forestry policy in a new and relatively undeveloped country like this.

Sooner or later, some time, we shall reach the point the European countries have reached long ago, where it will be economically profitable to develop a system of forests to take care of cut-over lands, and the leaving of seed trees, and so on, and when that time comes, if we in the meantime have made our tax system right, then we shall be in a position to adopt the proper policy. That is the real tax problem as regards growing forests, to put our tax system in such shape that it shall not be an obstacle to the development of scientific forestry, at such time as that policy may be economically possible otherwise.

Mr. Murphy: May I add a word supplementing Professor Fairchild's answer to Mr. Armson. Mr. Fairchild said that probably the conditions are not yet ripe to attract the individual owner to practice forestry. At the same time I think that we have sufficient evidence of a willingness to undertake forestry practice, particularly on the part of corporate owners, such as paper companies,

who have large investments in plant. They cannot move that plant around to the different forests; they have to be assured of a continual supply coming to that plant; and I believe there are a large number of such plants today that are on the verge of starting. There is no question but what, as Professor Fairchild has said, if we readjust the tax system to harmonize with the business of forestry, we shall promote by that much the taking up of this work seriously. It seems to me we have an appeal in fire protection. We might have proceeded to say to the private owner who wanted to practice forestry: "We will make fire protection optional. If you are interested in practicing forestry we will put up 'phones and help you protect your land." I doubt very much if we should have gotten very far. We have, however, simply recognized that fire protection is an essential fundamental to save forests, and we have gone ahead and established state-wide fire protection. Now, it seems to me that that has gone a long way toward putting the timber land owner in the right state of mind—he hadn't any mind previously—a right state of mind to go ahead and take care of his land, and it seems to me that if we adjust this forest tax question in a right way, give the timber land owner a square deal, let him see just what the situation is in reference to taxes, it will have the same beneficial effect that state-wide fire protection has had. It will hasten the thing along. As Mr. Fairchild says, it is not going to actually bring it about, but it is going to remove an obstacle, the same as unlimited fire burning was an obstacle.

Mr. N. A. Nelson of Minnesota: I was very much interested in the concrete plan that the gentleman from Michigan suggested with reference to taxation of timber land. I may not have understood just what he meant by exempting the land until the forest was ripe. Does he mean, and I ask the question, to exempt that land until such time as the owner chooses to cut the timber, or does he provide a valuation upon that land when it becomes merchantable in the opinion of the tax commission, or whatever body may be suggested?

Mr. Barnes: I think you misunderstood me. I intended to announce that the land is to be considered as bare, even if it is covered with a heavy growth of timber. For taxation purposes that bare land should never be exempt, whether it was land growing a new forest or an old forest, but in order that the owner might see a way into the distance, I would make the tax upon that land, based upon its present value, fixed for twenty or thirty years, subject to revision only when there was a change in conditions that drew it out of equality with other surrounding lands.

I meant that they should at no time pay a tax on the growing timber, but that there should be at all times a tax upon the land

devoted to forestry, whether young growth or old growth. In the case of new forests, the only tax would be a fixed annual tax upon the land value. In the case of any matured timber upon land, there would be a tax upon the land and a tax upon the appraised value of merchantable timber. That is what I intended to say.

Mr. Chairman, I do not want to interrupt the discussion, but I want to make a motion, that I presume you will refer to the committee on resolutions, that this committee be continued for another year and requested to continue their investigations of this subject and report at the next tax conference. I make it at this time not for the purpose of interrupting, but that it may not be overlooked and that it may go to the committee on resolutions to be acted upon by them.

CHAIRMAN HALE: That is, it is your desire that it should be referred to the committee on resolutions?

MR. BARNES: I don't know, but I assumed that was the universal practice of this body, therefore I suggested that. I make the motion, if it is supported, that it be presented, as you would make a report to any body like this, that the committee be continued for another year.

(Motion seconded)

CHAIRMAN HALE: Motion has been made and seconded. Is there any discussion?

MR. HARRY P. SNEED of Louisiana: I think under the rules it is not necessary to submit a motion of that character to the committee; that the conference can act on it.

CHAIRMAN HALE: I am not familiar with the rules, but I will so rule, unless there is objection, that this meeting can act upon the motion. Are you ready for the question?

(No response)

CHAIRMAN HALE: All those in favor, please say aye.

(Ayes and noes)

CHAIRMAN HALE: It is a vote.

(Motion carried)

CHAIRMAN HALE: Is there any further discussion?

MR. BUELL: Mr. Chairman, I should like to ask that committee to consider another matter that is very germane in this connection, and report at the next session, and that would be this, whether it could be made a fair and reasonable proposition to hold the owners of cut-over lands responsible for keeping their lands free from fire danger, and if they don't do it, put a special tax upon them to meet

the expenses of the state keeping their lands free from fire danger; let the state have the power to go in and put their land into safe condition and tax the cost specifically against the owner who neglects or refuses to keep the fire protection.

CHAIRMAN HALE: The committee will take the suggestion under advisement. Is there anything further?

MR. WHITE: It is not germane to this question at all, but I should like to suggest that there are many members of the association who leave before the final meeting on Friday night, and I wonder if it would not be possible to expedite these matters a bit so we can get through Friday afternoon. Some of the people are going to leave tomorrow, some will stay until Friday or Thursday night, and some will go Friday afternoon anyhow, so I hope that may be done, and I think it can be done if members will be a little more prompt at the meetings, and I move that we do that to expedite matters, so as to have the final meeting Friday afternoon instead of Friday evening.

CHAIRMAN HALE: I think, Captain White, my jurisdiction does not extend that far, for that is a matter for the conference rather than this particular session, over which I am presiding. If there is no further discussion I shall restore the reins to the chairman and allow him to proceed and take whatever action he desires on the motion.

MR. E. E. LEASON: How many thousands of feet of timber per acre do these lands carry before they are classified or assessed as timber lands, as you call them? In British Columbia we have limits both east and west on the Cascades, five thousand on the east and eight thousand on the west. That is the minimum. Some will reach sixty, eighty, ninety thousand per acre. Is there any limitation here, the number of thousand feet per acre the timber must carry before your lands are classified as forests?

CHAIRMAN HALE: Perhaps some one else can answer that question, but I am sure I cannot, sir.

PROFESSOR FAIRCHILD: I might say that the plan this committee recommends does not involve that question at all. Our plan is not going to be limited at all to any particular kinds of land whatever, no question of classification arises.

CHAIRMAN LORD (resuming the chair): Are there any announcements, Mr. Secretary?

(Announcements by the secretary as to meetings of certain committees)

MR. WHITE: I make my suggestion to the chairman of the con-

vention that things be speeded up a little bit so we will have our final meeting Friday afternoon.

CHAIRMAN LORD: I assure the Captain that if it were in my power I would compel all delegates to be here on time, but that power does not seem to be vested in me. I think that the suggestion, however, is a wise one and that it would very much expedite matters if we could be here on time. Ten o'clock is not an especially early hour, and I suggest, if possible, that we meet tomorrow morning at ten o'clock sharp, so we can get along more rapidly with our work.

MR. W. W. LAW, JR., of New York: I have a resolution that in conformity with the request of the committee on resolutions to promptly submit, I should like to submit at this time and ask that it be referred to the committee on resolutions. It is in relation to the taxation of shares of national banks. If you will allow me, I will read the resolution. (Reads resolution)

CHAIRMAN LORD: The resolution will be received and referred under the rule. Mr. Moffett of the local committee on arrangements wishes to make an announcement which I am sure will be interesting to you.

MR. MOFFETT: Tomorrow at noon the Civic and Commerce Association has a meeting at the West Hotel, known as a Dutch lunch. Dr. Adams is to address them on some subject of taxation. You are all invited to attend. On Thursday noon the Minneapolis Real Estate Board has its weekly luncheon, and any of you who are interested to meet the real estate men of this town are invited to that luncheon. At five o'clock tomorrow afternoon there will be provided at the Third Avenue entrance of the hotel a number of automobiles to take you around the city, and we hope that we may have a bright day for it. We have been waiting for it and hope to have a large attendance. I thank you.

CHAIRMAN LORD: If there are no further motions or suggestions, the meeting will stand adjourned until tomorrow morning at ten o'clock.

(Adjournment)

FIFTH SESSION

WEDNESDAY MORNING, SEPTEMBER 20, 1922

CHAIRMAN LORD: The session this morning relates to the taxation of public utilities, with particular reference to interstate properties and the presentation of a report by a committee. Perhaps no man connected with the rather difficult matter of properly taxing this class of property has had a wider experience than the Honorable Nils P. Haugen of Wisconsin, now of Montana. He needs no introduction at my hands, but I am going to ask him to preside at this session, while this matter is under consideration—Mr. Haugen.

NILS P. HAUGEN, presiding.

CHAIRMAN HAUGEN: There is a resolution which has been handed in and which will be referred to the committee. The secretary will read it.

SECRETARY HOLCOMB, reading:

Resolved, that this conference sends its heartiest commendation to President Harding for his veto of the shameless attempt to commercialize the valor and patriotism of American soldiers, to whom it was a privilege and sacred duty to fight for their country.

SECRETARY HOLCOMB: Here is another resolution as to the taxation of national banks. (Reads resolution)

CHAIRMAN HAUGEN: That resolution will be referred to the committee.

Members of the conference, ladies and gentlemen: I have not prepared anything for an opening address as chairman of this meeting, but we know that the matter of the assessment of public utilities presents a great many difficult questions. As stated by President Lord, the matter under discussion will relate more specifically to interstate properties.

There seem to be at least three questions involved in the assessment of interstate property. The first is to find a unit value of the entire property, then to allocate to the state that portion of the property which properly belongs within the state for taxation purposes; and the third question will be to equalize between the valuation of the property thus found, and the other property of the state. Different methods have been followed in the states in that

respect. In Wisconsin, with whose system I have had the most experience, they equalize by endeavoring to put all property taxable in the state at one hundred per cent, and thus ascertain the average tax rate for the entire state. That can be done in a state like Wisconsin, where all the revenues from railroad properties go into the state treasury and become a part of the general fund, but when you step over into Iowa, they allocate the value upon railroad property to the different assessment districts throughout the state, or to the counties at least. That is more difficult. Then, we have another system which prevails in some of the western states, and especially I can speak of Montana. The same is true, however, of Washington and some of the other western states, where they try to find the value of the property and allocate that to the different assessment districts, but they permit the local assessor to assess part of the unit property. For instance, in Montana, the local assessor, the assessor of the county, assesses the depot buildings, stations, roundhouses, turn-tables, and things of that kind, which certainly are a part of the unit and cannot be detached from the unit without destroying the unit value. The property, when it is allocated to the different districts, becomes subject to the local rate. That, too, is somewhat complicated.

I notice by the program that Mr. Davenport, chairman of the committee on public utilities, has a paper on this subject this morning. Senator Davenport is chairman of the special committee on taxation in the State of New York, and I take great pleasure in introducing the Senator.

Senator Frederick M. Davenport, of New York: You are going to be disappointed not only in other things, but because of the fact that when it comes to the question of apportionment, we have not yet gone very far. We found the first part of this job was a whale of a job, therefore this report ought to be called a report of the committee on the taxation of public utilities and not upon interstate apportionment of the tax. When Mr. Holcomb asked me to take the chairmanship of this committee I took it with the understanding that I was going to do my best to try to get the thing done. Personally I am just a plain, practical politician with leanings toward an interest in taxation, and with no claims whatever of detailed expertness.

Judge W. A. Hough of Indiana: Can't you substitute "principal" for "interest" in that?

Senator Davenport: It might be, if you spell it, but we have got on the committee a very intelligent gentleman from one of the fresh water colleges of the country, at New Haven, a young man named Fairchild, and as I read this report, if you find that I mispronounce any terms or if I read any paragraph in such a way

that it is very evident I don't understand it, all you have to do is to call on Fairchild. He has had a good deal to do with the preparation of this report.

REPORT OF THE COMMITTEE ON THE TAXATION OF PUBLIC UTILITIES AND UPON THE INTERSTATE APPORTIONMENT OF THE TAX

I. The problem of taxation of public utilities.
   1. Introductory.
   2. Present methods of taxing public utility corporations.
   3. The model tax system.

II. Taxation in relation to the economic nature of public utilities.
   1. The economic nature of public utilities.
   2. Three theories of taxation of public utilities.
   3. Measure of the burden of taxes on public utilities.
   4. Why do the public utilities require special treatment?

III. Proposed method of taxing public utilities.
   1. *Ad valorem* basis vs. earnings basis. Gross vs. net earnings.
   2. The earnings tax, gross or net.
   3. The tax on real estate.
   4. Constitutionality of the gross earnings tax.

IV. Interstate apportionment, tax rates, etc.

THE TAXATION OF PUBLIC UTILITIES

I. The Problem of Taxation of Public Utilities

1. *Introductory.* At the conference of the National Tax Association two years ago (1920) there was emphatic expression of the need of a definite formulation of policy to relieve the existing confusion in the taxation of property and income of interstate business. To meet this demand certain committees were authorized and charged with the duty of applying to the troublesome field of interstate business the principles developed by the committee on a model system of state and local taxation. One of these was the present committee on the apportionment of taxes on interstate public utilities. The committee was appointed late in the year and was able to make only a preliminary report to the conference of 1921. In this preliminary report attention was called to the great variety and confusion in the methods of taxing public utilities in the several states and to the extreme difficulty of working out a rational plan for apportioning an irrational collection of taxes. The association accordingly authorized the continuance of the committee and broadened the field of its inquiry to embrace the "consideration of the entire subject of utility taxation, with the suggestion of approaching a model law for all the states in the taxation of such property."

Pursuant to this authority the committee has continued its in-

vestigation during the year past and now presents the following report.

2. Present methods of taxing public utility corporations. The most striking features of the existing taxation of public utility corporations are (1) the extraordinary variety in the methods followed by the several states, (2) the duplication and confusion arising from the decentralized taxation of property by the local jurisdictions, and (3) the lack of any guiding principle in the taxation of the public utilities and in the place of such taxes in the tax system as a whole.

As to the first, it is quite safe to say that there are as many varieties of public utility taxes as there are states, indeed, more, since the same state frequently uses different methods for different classes of utilities.[1] From this bewildering collection of tax methods it is possible to select three types which stand out as of enough importance to merit special consideration. These are (1) the *ad valorem* basis, (2) the capitalization basis, and (3) the earnings basis.

Under the *ad valorem* basis the tax is imposed upon the value of the property of the corporation. This was the original method of taxing corporations under the general property tax. In the beginning, the valuation was made and the tax imposed by the local bodies, in exactly the same way as for natural persons. This crude method has now been generally abandoned. As employed in progressive states today, the *ad valorem* method involves a more or less expert valuation of the property of the corporation as a whole, made by a state board or officer, generally followed by apportionment of the taxable value thus determined among the local taxing districts. In determining the value of the corporation's property, a variety of evidence is used. It is safe to say that at present the most weight is given to the earning capacity of the corporation; in other words, the value of the property is determined primarily by capitalizing the corporation's net earnings.

The *ad valorem* basis is the one most widely used. About half the states rely on it exclusively for the taxation of railroads.

[1] In order that it might have the facts before it, the committee has had a thorough analysis made of the present methods of taxing railroad companies in the several states. This study was made by Mr. Armson. A briefer analysis of the methods of assessing car companies was prepared by Mr. Goodwin. Reference is also made to a digest of the laws of the several states relating to taxation of public utilities made by the New York special joint committee on taxation and retrenchment and published in its report of 1922 (pp. 314-359), and to an analysis of the methods of the several states in the taxation of railroads, street railways, express companies, telephone companies, and telegraph companies, published by the Connecticut special commission on taxation of corporations paying taxes to the state, 1913 (pp. 192-228).

Nearly as many use it as the exclusive tax for telephone and telegraph companies. About a dozen states use it as the only method of taxing street railways and water, gas and electric companies. *Ad valorem* taxes are used in connection with other methods in many other states.

The capitalization basis involves the imposition of a tax upon the value of the securities of the corporation. This sometimes includes only the value of the stock; in other cases, and more correctly, the value of both stock and bonds is used. It is safe to say that this basis has generally proved unsatisfactory, and is today of declining importance. Only three or four states rely upon this method alone for the taxation of one or more of the classes of public utility corporations. About half a dozen states use this in connection with other methods.

Next to the *ad valorem* basis, the earnings basis is the one in widest use. The amount of the tax is stated as a certain percentage of the earnings. The rate of the tax is generally fixed with the idea of making the tax correspond, at least roughly, with the burden of the property tax on taxpayers generally. The rate is apt to be different for different classes of corporations. The earnings tax is almost always based on gross earnings. The gross earnings basis is used for the taxation of railroads, of street railways, of telephone and telegraph companies, of water, gas and electric companies in a considerable number of states.

The confusion and duplication arising from the taxation of the property of public utility corporations by the several towns and counties is notorious. What could be more absurd than the taxation of a great railroad system or a telegraph company upon odd bits of its tracks or odd sections of poles and wires in hundreds of small local taxing districts? The local assessors are usually quite powerless to value such property, even if there were any such thing as a real value of odd bits of tracks or lines, apart from the value of the whole plant. The corporation must take account of thousands of different assessments and thousands of different levies at as many different rates. It receives thousands of separate tax bills for amounts varying from hundreds of dollars down to a few cents. It must employ an army of tax agents to protect its interests. An enormous burden, quite in addition to the actual amount of its taxes, is thus placed upon the public utility corporations.

The lack of any guiding principle is obvious from even a cursory study of the present methods of taxing public utilities. The extraordinary diversity of methods is not merely the result of difference of opinion regarding the means for producing a desired end. It represents lack of agreement upon fundamental matters of principle. What are the economic characteristics of the public utility? On what principle are the charges for its services determined?

How does legal regulation of its charges distinguish the public utility from other businesses? What is the relation between rate regulation and taxation? How is the taxation of public utilities to be fitted harmoniously into the general tax system? These are questions which must be considered in formulating any rational system of public utility taxation and in apportioning the taxes upon public utilities engaged in interstate business.

3. *The model tax system.* As a condition of its problem, the committee has assumed the tax system outlined by the committee on a Model Tax System. This system includes three taxes: (1) an individual income tax, (2) a property tax upon real estate and perhaps tangible personal property, but not on intangible property, and (3) a business tax. The committee's problem is to develop a plan for the taxation of public utility corporations which will fit harmoniously into this general system. As a practical consideration, the committee has had to take cognizance of the fact that the system of the model committee is not now actually in effect in any great number of states and that its general adoption will necessarily be a slow process. Moreover, there is the feeling among members of the committee that the taxation of tangible personal property is very probably destined to hold even a less important place in the future American tax systems than has been assigned to it by the model committee, although the committee itself seems not to regard it as essential. Large classes of tangible personalty are already virtually exempt from taxation by default and there is evident a growing movement to grant legal exemption to many, if not all, kinds of tangible personalty. The possibility that some states may see fit to classify tangible personalty and to tax certain classes at low rates is also to be reckoned with. These possibilities are indeed recognized by the model committee. The committee has accordingly undertaken to develop a plan for taxing public utilities which would be in harmony with the ideal system of the model committee generally, rather than an isolated plan for public utilities in particular; and at the same time a plan which would have sufficient elasticity to make possible its adaptation to present day conditions in at least a majority of the states, without necessarily waiting for the complete adoption of the model tax system.

II. Taxation in Relation to the Economic Nature of Public Utilities

1. *The economic nature of public utilities.* In general, public utilities are distinguished from other business enterprises by two important characteristics. (1) They are in possession of certain special privileges received from government; the power to obtain land through condemnation; the right to use the public streets for their tracks or pipes, or wires, etc. These privileges very frequently

give the public utility a monopoly. (2) The public utilities are under obligation to render adequate service to the public and to make reasonable charges for such service. This double obligation is now generally enforced by government, through commissions or other public agencies, having power to regulate the character of service rendered and the rates charged. Public regulation of rates and service may now be assumed as the normal condition.

In the days before legal regulation became the accepted principle, the privileged position of the public utilities was often made the ground for advocating especially heavy taxation of public utilities, on the theory that there should thus be recovered for the public as great a share as possible of that which rightfully belonged to the public. With the general acceptance of the principle of regulation, this reason for taxing public utilities more heavily than other kinds of property has ceased to exist.

2. *Three theories of taxation of public utilities.* Upon the assumption of legal regulation we may have three theories of taxation of public utilities. In the first place, it is possible to subject the public utilities to heavy taxation—heavier than is borne by other kinds of property. Because of its privileged position the utility is assumed to be able to pass these taxes on to the consumers of its services, and the regulating authority will allow rates high enough to permit such shifting and to leave to the utility a fair profit on its investment. Or, put in other words, rates will be high, with taxes high enough to take substantially all profits above a fair return. This is in effect a tax on the consumer of the service, with the public utility acting as tax-gatherer for the government.

In the opinion of the committee, this theory is not sound. It is fair neither to the consuming public nor to the utility. The use of transportation, gas or electricity, telephone or telegraph service or the service of any public utility is not a fair measure of tax-paying ability. Some men are required to travel constantly in the conduct of their businesses; others travel little. Some persons must travel daily to and from their work; others have no such necessity. It is recognized that in the course of time economic adjustments, for example in rents, tend to soften such irregularities, but it is not believed that such adjustments are either certain enough or prompt enough to overcome the initial injustice. Public utility services, moreover, are generally necessities, and their use as a measure of tax obligation imposes a degressive tax burden, increasing in relative severity as one goes down the economic scale. From the side of the taxed utility this theory is unfair, for the reason that the mere permission to charge high rates does not always carry the power to shift heavy taxes. If rates are already as high as the traffic will bear, it is futile to attempt to shift taxes by raising rates, even though the increase be perfectly legal. Finally, this

theory may lead to serious interstate inequalities. It is not easy to justify a tax imposed by one state and shifted to consumers who are residents of another state.

The second theory of taxation of public utilities goes to the opposite extreme. It would exempt the utility entirely, to the end that the service may be given the consumers at the lowest possible rate. This theory, in the opinion of the committee, is also untenable. The public utility enjoys certain services from the government, in the protection of its property and otherwise, like any other property owner. The government is compelled to incur certain expenditures, in order to render its services to the public utility. This governmental service must be regarded as one of the costs of furnishing the service by the public utility. It forms the basis for a tax upon the public utility, a tax which may be passed on as a fair charge upon the consumers. Whereas the first theory would impose upon the utility consumers an unfair share of the cost of government, which ought to be borne by the general body of taxpayers, this theory would put upon the general taxpayers a government cost which should be regarded as part of the costs of furnishing the public service, and should therefore be borne by the consumers.

The third theory, in the committee's opinion the sound theory, would place the taxation of the public utilities as nearly as possible on an equality with other kinds of property and business. The general principle of equality in taxation will be questioned by few. It has had repeated support at these conferences. A heavy burden of proof rests upon him who advocates departure from the principle of equality in any particular case. The committee fails to find any valid argument for departure from this principle in the case of the taxation of public utilities.

Two points need to be emphasized in this connection. (1) It should by now be well recognized that equality does not require uniformity either of method or of rate. Equality relates to the actual burden of taxation. It may be the result of a judicious variety of tax methods. As will be shown later, there is good reason for taxing public utilities by methods distinct from those applied to other property or businesses. This implies no departure from the principle of equality. (2) It cannot be too strongly insisted that equality must be real equality and not merely formal. Because the statutes declare that all property, real and personal, tangible and intangible, shall be taxed at the same rate, it must not be assumed that all property is actually so taxed. For example, the development of an efficient process for the centralized assessment of all the property of public utility corporations may produce, not equality, but gross inequality, because of the simple fact that

equally efficient methods of assessment are not applied to all the taxable property of other taxpayers.[2]

3. *Measure of the burden of taxes on public utilities.* If the principle of equality is to prevail, the burden of the taxes upon the public utilities should correspond to the taxes levied upon other kinds of property and business. The model tax system embraces (1) an individual income tax, (2) the property tax, and (3) a business tax. How may the taxation of the public utilities be fitted into this system?

It should always be remembered that we are seeking to find a fair measure of the contribution to be demanded of the public utilities, but do not have in mind application to such corporations of the same methods of taxation which are applied to other taxpayers in the model system. What we seek at this point is a measure of the burden, not the method.

(1) As regards the individual income tax, there is no special problem. This is a tax on individuals, not on corporations. It will not be imposed on the incorporated public utilities. On the other hand, being a tax on virtually all incomes, regardless of their source, it will fall upon the stockholders and bond holders of the public utility corporations, with respect to their dividends and interest, as in the case of other corporations.

(2) Under the property tax, the burden borne by the public utilities should correspond to that of other property owners. Possession of property by the public utility should measure taxpaying obligation to the extent that similar property is actually taxed to other owners. It may be assumed that real estate is everywhere taxed. (We do not here mean technical legal real estate, but ordinary economic real estate; that is, land and buildings.) But the fact of assessment at less than true value must not be overlooked. As a measure of tax obligation, the public utility's real estate must not be valued at its true value, while real estate in general is differently assessed. Or, if this is done, allowance must be made elsewhere. The same rule applies to the tangible personal property of the public utility. Such property should be a measure of tax obligation to the extent, and only to the extent, that tangible personalty is actually taxed to other owners. Reference must be, not to the formal statute, but to the facts of prevailing practice, with due allowance for under-assessment and complete escape of much tangible property, as well as for legal exemption. It is assumed that there will be, in the model system, no taxation of intangible

[2] The importance of the principle of equality was ably discussed by a former committee on the taxation of public service corporations, which reported to the national tax conference of 1913 (Proceedings, seventh conference, pp. 372-383). With the arguments and conclusions of that report, the present committee is in substantial agreement.

personal property. The possession of such property by the public utility should therefore not be used as an index of tax obligation, and in valuing the property of the utiilty as a whole, no account should be taken of franchise or other intangible values.

The preceding paragraph, while stated with reference to the model tax system, nevertheless furnishes the general rule for all cases. Its acceptance need not await the complete adoption of the model system. For example, if intangibles, or certain classes thereof, are taxed, such property in the possession of the public utility should be given corresponding consideration. On the other hand, any state which sees fit to exempt tangible personalty, in whole or in part, has only to be consistent by disregarding such property in determining the tax obligation of its public utilities. In general, property of all sorts may be used to measure the tax obligation of the public utilities, to the etxent that similar property is actually taxed in the hands of other owners, due account being taken of exemptions, actual as well as legal, evasion, and under-assessment. The necessity of having regard to such excrescences will continue so long as the general tax system remains in its present imperfect state. We cannot safely put a new patch of efficient public utility assessment upon the old tax garment.

(3) In addition to the contribution as measured by property, the public utilities should be called upon for a contribution corresponding to the business tax. Here also the rule of equality must govern, and those states which do not impose a business tax upon other business cannot fairly exact a corresponding contribution from the public utilities.

(4) Finally, the peculiar position of the public utility, as a privileged and regulated enterprise, appears to the committee to require a special tax treatment in order to carry out completely the principle of rate regulation. This topic will be further developed in the following section.

4. *Why do the public utilities require special treatment?* In the preceding section the principle of equality has been applied to the taxation of public utilities as compared with other kinds of property and business. The question may arise: Why not accomplish equality by simply subjecting the public utilities to the same property and business taxes as are applied to property and business in general? Why is special treatment required? The answer depends upon two considerations—(1) the character of the property of the public utility, and (2) rate regulation.

The property of the ordinary public utility is peculiar on account of (a) its highly technical character, (b) the fact that its value can generally be appraised only as a whole plant, not in separate parts, and (c) its widespread location in many local tax jurisdictions.

These peculiarities make the assessment of public utility property a special problem. The local assessors are generally not qualified for the task. The property cannot be valued in little bits. Central assessment is a necessity. With central assessment comes the danger, already referred to, that public utility property will be fully and accurately valued, while property in general is largely undervalued or overlooked. Indeed the whole problem of assessing the property of the great public utilities is so complicated and difficult that the property basis seems likely to be displaced by other more effective methods of taxation. At any rate, the ordinary methods of the general property tax are wholly inapplicable to the public utilities.

It was these peculiarities of public utility property that early led to the break-down of the old general property tax as applied to the public utilities, compelling the substitution of centralized for local assessment and the invention of special methods of taxation. That is to say, the weaknesses of the general property tax were earlier discovered and remedies earlier attempted in the case of the public utilities than with respect to other kinds of property. Much progress has been made. Tax technique has been perfected and valuable experience gained. In spite of the inherent difficulties, it is safe to say that in many states the taxation of public utility corporations has reached a technical efficiency far beyond what has anywhere been attained in the administration of the general property tax. To name only random examples, witness the *ad valorem* taxation of Wisconsin and the gross earnings taxes of Minnesota and Connecticut. These advantages should not be thrown away.

The second consideration which points to special treatment of the public utilities is the matter of rate regulation. Rate regulation and taxation must go together and supplement each other. Rate regulation should be such as to enable the public utility to earn, in the long run, a fair return on all its property and to secure fresh capital as required for the proper maintenance and development of the enterprise. The actual ruling of the supreme court is a reasonable return on the fair value of the property at the time the rate regulation is applied. The legal rates must permit profits greater than the normal in the good years to offset smaller profits or losses in other years. Changes in the legal rate limits occur at more or less long intervals. In the interim changed conditions may permit of higher profits than were contemplated. Again rates may be limited by general rules applying to several corporations. Rates sufficient for the least favorably situated may give high profits to those in more favorable circumstances. Taxation should be relied upon to take for the public a part of the extra profits made under unexpectedly favorable conditions or by the more fortunate corporations. Such a tax should be levied upon pure economic profits,

after allowing a reasonable rate of interest upon all the capital invested, whether owned or borrowed. A tax on this basis may be at fairly high rates, but not so high as to take away from the utilities the incentive to economy and efficiency required in the interest of the public as well as of the utilities themselves.

III. Proposed Method of Taxing Public Utilities

1. *Ad valorem basis vs. earnings basis. Gross vs. net earnings.* In the foregoing sections of its report the committee has undertaken to formulate certain principles to govern the taxation of public utilities. In particular we have sought a guide to measure the amount of the tax contribution of the utilities. The remaining task is to develop the most effective means for putting these principles into effect. Experience in the taxation of public utilities has now gone far enough so that the choice of a tax basis is practically narrowed down to two: i. e., the *ad valorem* basis and the earnings basis.

The *ad valorem* basis, in spite of its use by the majority of the states, is open to serious objections. Whatever the process employed for obtaining the value of the corporation's property, the operation is difficult and expensive. To be properly performed, it requires a large staff of experts familiar with the technical details of the business and the corporations involved. At the best, the element of personal judgment must always enter to a large degree.

There are also serious theoretical questions involved, first, as to the valuation of the physical properties, and secondly, as to the use to be made of the facts regarding financial condition, earnings, etc. The vice of the real operation of the *ad valorem* system is in the extremely arbitrary and unequal results. When occasion demands, wholly arbitrary and inexplicable changes are made without any rational basis. And the trouble is that there is no practical method of securing judicial review; (1) because of the subject matter, (2) because of the utter impossibility of equalizing where there is no similar property with which to make comparison. The almost entire absence of the possibility of equity is the disturbing factor.

Finally, the fact remains that the value of property alone is not a true measure of a corporation's worth or of the taxes it should pay. The thing that really gives worth to a corporation is its earning power. It is significant that so many of the states which rely upon the *ad valorem* basis have found it necessary to take account of earnings in arriving at the value of the corporation's property.

The *ad valorem* basis lacks simplicity. It is apt to become arbitrary. Its administration is difficult and expensive. It is not an accurate measure of the obligation or ability to pay taxes. It does not succeed in placing the burden of taxation equitably.

The tax on earnings is strong at the points where the *ad valorem* basis is weak. The earnings of a corporation are the real basis of its worth and its taxpaying ability. The earnings tax involves the fewest theoretical difficulties and is simple and inexpensive to administer. Earnings are a matter of fact, about which there will generally not be disagreement. The determination of net earnings does involve certain difficulties, but in general the element of personal judgment is relatively small as compared with the property tax. The earnings tax is simple and clear, it usually fluctuates with the prosperity of the taxpaying corporations, and it is generally equitable between corporations.

The outstanding facts in recent tax history are the concentration of public opinion in favor of taxes upon incomes or earnings and the rapid development of such taxes. In legislation the federal government has taken the lead in taxing corporate and individual incomes. Several states, notably California, Minnesota and Connecticut, have led the way in the taxation of public utility corporations on the basis of gross earnings. A number of states, among which Wisconsin and New York are leaders, have made progress in the successful taxation of individual incomes and the net incomes of business corporations. The present tendency is without doubt in the direction of income and earnings taxes, which confirms the conclusion in favor of the earnings basis for the taxation of the public utility corporations.

The next question has to do with the relative merits of net earnings and gross earnings as the basis of the tax. The situation may be summarized briefly, as follows: Net earnings are the fairest and most accurate measure of the ability to pay taxes, an important advantage of this basis. On the other hand, the gross earnings basis has the advantage of greater certainty and simplicity. Gross earnings are a matter of fact, clearly shown on the books, about which there will seldom be difference of opinion. Determination of net earnings requires the deduction of a great variety of expenses, involving some exercise of judgment and the possibility of disagreement and evasion. Ten years ago this argument was generally decisive in favor of the gross earnings basis. Today it is not so strong. Under the compulsion of the federal income tax, those public utility corporations whose accounts were not already prescribed by the interstate commerce commission have been led to put their accounting systems into order. Since the federal returns of these corporations are subject to inspection by the officers of any state imposing an income tax upon them, there would appear now to be much less practical difficulty in the way of the tax on net earnings than formerly, though the advantage of extreme simplicity still remains with the gross earnings basis.

The decision between the two bases really rests upon a more

fundamental question as to the theory of the corporation tax. Is the obligation to contribute to the support of the state to be limited to those corporations that make profits? If so, the net earnings tax is indicated. On the other hand, if it is intended that the corporations shall contribute, whether they make profits or not, if taxes are to be regarded as one of the necessary costs of business, the gross earnings tax is the proper method. Obviously the government must function in years when business is poor as well as in years of prosperity. If certain sources of revenue decline or fail, other sources must make good the loss.

Taxes may be classified into two groups: (1) Those which are paid only out of profits or net income, such as the individual income tax and the income taxes imposed by certain states (e. g., New York and Connecticut) on business corporations, and (2) those which continue with fair regularity, regardless of profits or which may even be increased in years of business depression, to make good the losses from other sources; the only important example (aside from the gross earnings tax on corporations) is the property tax. The question is: Into which class shall the tax on public utility corporations be put? It is simply the practical question of how far the states can safely go in narrowing the basis of taxes upon which they may rely for a regular income, regardless of fluctuations in business prosperity. There is a strong tendency in this direction. The general property tax seems tending to become practically a tax on real estate only. The center of gravity of the revenue system is rapidly moving to the side of net income and net earnings taxes. There is danger that the states may find themselves dependent upon an irregular income—too great in some years, and insufficient in others, and that the property tax may not be elastic enough to stand the strain of the lean years. It is this consideration that dictates caution in going over completely to the net earnings basis.

The practical consideration of government necessity would seem therefore to preclude the complete adoption of the net earnings basis. On the other hand, the gross earnings basis may fairly be charged, on behalf of the tax-paying utility, with neglect of the principle of ability to pay. In particular it puts a heavy burden upon the utility whose net earnings are small or entirely lacking. It is to be noted that in this respect the gross earnings tax is no worse, indeed is probably better, than the property tax. Nevertheless, this is a real defect.

2. *The earnings tax, gross or net.* In the opinion of the committee the dilemma which thus arises may be met by a combination of gross and net earnings taxes. A tax on net earnings could be imposed at a certain rate, with the proviso that the amount of the tax should never be less than a certain moderate percentage of the

gross earnings. This is the same thing as providing two taxes, one on gross earnings, at a moderate rate, the other at a higher rate on net earnings, with the proviso that in each particular case the tax collected shall be the higher of the two. For example, the law might provide a tax of ten per cent of net earnings, the amount of which should never be less than two per cent of gross earnings. The same result would be accomplished by providing that each utility should pay either ten per cent, or any other per cent, of its net earnings, or two per cent, or any other per cent, of its gross earnings, whichever were the greater. The committee, of course, uses these particular rates merely for the sake of illustration.[3]

Gross Earnings	Net Earnings	Tax	Resulting Ratio of Tax	
			To Gross	To Net
$100,000	Not over $5,000	$2,000	2%	40% or over
100,000	$5,000 to 10,000	2,000	2%	40% to 20%
100,000	10,000 to 15,000	2,000	2%	20% to 13⅓%
100,000	15,000 to 20,000	2,000	2%	13⅓ to 10%
100,000	20,000 to 25,000	2,000 to 2,500	2% to 2½%	10%
100,000	25,000 to 30,000	2,500 to 3,000	2½% to 3%	10%
100,000	30,000 to 35,000	3,000 to 3,500	3% to 3½%	10%
100,000	35,000 to 40,000	3,500 to 4,000	3½% to 4%	10%

Virtually the same result could also be obtained by means of a gross earnings tax at a progressive rate, starting with a moderate rate where net earnings bear a small ratio to gross or are non-existent, and increasing with the increase in the ratio of net to gross. For example, such a progressive tax on gross earnings might be at the following rates:

Every company shall pay an annual tax which shall be based on gross earnings and which shall be the percentage of gross earnings fixed herein:

(a) When it has no net earnings or its net earnings do not exceed 5 per cent of its gross earnings—1 per cent;

(b) When its net earnings exceed 5 per cent of its gross earnings but do not exceed 10 per cent—1¼ per cent;

(c) When its net earnings exceed 10 per cent of its gross earnings but do not exceed 15 per cent—1½ per cent;

(d) When its net earnings exceed 15 per cent of its gross earnings but do not exceed 20 per cent—1¾ per cent;

[3] The effect of such a tax may be illustrated by the following example:

(e) When its net earnings exceed 20 per cent of its gross earnings but do not exceed 25 per cent—2 per cent;

(f) When its net earnings exceed 25 per cent of its gross earnings but do not exceed 30 per cent—2¼ per cent;

(g) When its net earnings exceed 30 per cent of its gross earnings but do not exceed 35 per cent—2½ per cent;

(h) When its net earnings exceed 35 per cent of its gross earnings but do not exceed 40 per cent—2¾ per cent;

(i) When its net earnings exceed 40 per cent of its gross earnings—3 per cent.[4]

Gross Earnings	Net Earnings	Ratio Net to Gross	Rate	Tax	Resulting Ratio of Tax to Net
$100,000	Not over $5,000	Not over 5%	1%	$1,000	.20 or more
100,000	5,000 to 10,000	5% to 10%	1¼%	1,250	.25 to .125
100,000	10,000 to 15,000	10% to 15%	1½%	1,500	.15 to .10
100,000	15,000 to 20,000	15% to 20%	1¾%	1,750	.116 to .087
100,000	20,000 to 25,000	20% to 25%	2%	2,000	.10 to .08
100,000	25,000 to 30,000	25% to 30%	2¼%	2,250	.09 to .075
100,000	30,000 to 35,000	30% to 35%	2½%	2,500	.083 to .071
100,000	35,000 to 40,000	35% to 40%	2¾%	2,750	.078 to .068
100,000	Over 40,000	Over 40%	3%	3,000	.075 or less

Such a combination tax is a reasonable compromise between the gross earnings basis and the net earnings basis. Being based primarily upon net earnings, the tax takes account of the varying abilities of the several utilities. On the other hand, the requirement of a certain minimum contribution from each corporation, upon the basis of gross earnings, meets the public requirement of regular and dependable revenue.

Such an alternative gross or net tax is in harmony with the principles laid down as a guide for measuring the amount of the tax contribution of the public utilities. By proper adjustment of the rates applied to gross and net earnings resectively, the burden of the tax may be made to correspond fairly with the burden of the property tax upon other taxpayers.[5] In determining this rate, the fact must, of course, not be overlooked that much intangible property and also a good deal of tangible property escapes taxation

[4] The operation of these rates may be illustrated by the following example:

[5] For a full discussion of this principle and its application, cf. the report of the California tax commission of 1906 and the report of the Connecticut special commission on taxation of certain corporations of 1913 (especially pp. 6-14).

under the general property tax. As we have already emphasized, the tax on public utilities must correspond not to a property tax which reaches all kinds of property, but to the property tax as we know it, under which there is widespread escape of many forms of tangible and intangible personalty. While not quite so rigid as the property tax, its amount will be fairly regular from year to year. This regularity may be further enhanced, to the advantage of both the government and the utilities, by taking as the base the average of the earnings of several years (e. g., the past five years) instead of a single year. The alternative gross or net tax may be used, therefore, to exact from the public utilities that contribution which is due from them on account of the possession of property, while securing the great advantage of certainty and simplicity, which are lost if the tax is imposed directly upon the property. On the other hand, the rate of net earnings may be so adjusted as to take account of both property and business taxes.

The tax on net earnings may also be made to serve to take some part of the profits of the more favorably situated utilities, as required by the principle of rate regulation. The more exact way to accomplish this end would be by means of an additional tax upon pure economic profits, meaning the profits remaining after allowing a fair rate of interest upon all the capital employed, whether owned or borrowed. While making no positive recommendation, the committee is inclined to favor such a tax and believes that this idea is likely to gain favor as the scientific regulation of public utilities progresses.

3. *The tax on real estate (i. e., actual real estate, land and buildings, not technical legal real estate).* One further matter must be considered in this connection. That is the question of the taxation of real estate. The simplest way to tax the public utilities would be to impose the alternative gross or net tax as an exclusive tax. No further taxation of the utility's property, either real or personal, need be required. This is the method followed, for example, by Connecticut in the taxation of railroad corporations; a gross earnings tax is imposed in lieu of all other taxation of property used in the railroad business. The alternative gross or net earnings tax may thus be used as the exclusive tax exacted from the public utilities, with rates so adjusted as to meet all the requirements of equality and in large measure also the requirements of rate regulation.

The committee is firmly convinced that with the earnings tax there should be no taxation of the franchise or intangible property of the public utilities, and preferably also no taxation of tangible personalty. It is probable, however, that most states will see fit to continue the taxation of the real estate at least, of the public utilities. In that case the amount of the tax on real estate should

be allowed as a deduction from the alternative gross or net earnings tax, or else adequate allowance for the real estate tax should be made in fixing the rates of the earnings tax. The basic gross or net earnings tax should be the measure of the tax contribution of the utilities, except, of course, in individual cases, where the real estate tax alone (allowed as a deduction) might exceed the entire earnings tax. This rule is clearly required by the principle of equality which has been laid down. It is also necessary to insure the constitutionality of the gross earnings tax when applied to earnings from interstate commerce, a topic which is discussed in the next section. If real estate is taxed at all, it should include only land and buildings, not the right of way.

4. *Constitutionality of the gross earnings tax.* Doubt is sometimes expressed of the constitutional power of a state to impose a tax measured by gross earnings derived, in whole or in part, from interstate commerce. Such doubt can arise only from misapprehension of the decisions of the United States supreme court. This subject has been thoroughly studied by numerous authorities.[6] The conclusions from the decisions of the Supreme Court are quite clear. They may be stated briefly as follows:

First of all, there is no question of the general principle that all laws which impose taxes directly burdening gross receipts from interstate commerce are in violation of the Federal Constitution and void. The right of a state, however, to impose taxes upon the property of corporations within its borders is unquestioned, even though the corporations be engaged in interstate commerce. Again, a state may value the property of corporations by the "unit rule"; that is, may ascertain the total value of the entire system and then apportion to the state in question a share of the entire property, according to the ratio of the mileage within the state to the total mileage of the system, or according to the ratio of business done

[6] A careful examination of the whole subject was made by the California tax commission of 1906, which examined a long line of decisions of the United States supreme court. Mr. A. E. Holcomb, in a paper read before the fifth annual conference of the international tax association in 1911, presented a careful summary of the decisions of the supreme court on this matter, written, it should be noted, before the Oklahoma and Texas decisions were rendered. These decisions confirm Holcomb's conclusions. Willoughby in "Constitutional Law," published in 1910, reviews the subject. Finally, the supreme court itself in its opinion in Galveston, Harrisburg, and San Antonio Railway Company vs. Texas—210 U. S. 217—took occasion to review a long line of its own decisions upon this matter. Cf. also the report of the Connecticut special commission on the taxation of certain corporations, 1913, pp. 19-20. Digests of the decisions of the supreme court upon the taxation by the states of corporations engaged in interstate commerce and upon gross earnings taxes were prepared for the committee by Mr. Robert C. Cumming.

within the state to the business of the whole system. Finally, in lieu of the tax on property, a state may impose a tax on earnings, and in reaching such a tax, gross earnings from interstate commerce may be used. It is also possible to use net earnings, and in this case no difficulty arises from the use of earnings from interstate commerce, as was clearly held in the decision in *U. S. Glue Co.* v. *Town of Oak Creek,* 247 U. S. 321.

There can be, therefore, no doubt of the legality of a properly drawn tax based upon gross and net earnings. All that is required is that the amount of the tax, if based upon gross earnings and if exclusive, should not be greater than a tax upon the property of the company as compared with taxes imposed upon property generally in the state.[7] Such a tax will be regarded, not as a tax upon earnings, but as a tax upon property, using earnings as a means to reach the property. The committee has been careful to insist that the above requirements be met in the recommendations which it makes.

IV. Interstate Apportionment, Tax Rates, etc.

This brings us to the question of interstate apportionment. The committee has only recently reached an agreement on the general plan for the taxation of public utilities, which proposes an arrangement that is novel in certain important respects, particularly in that it provides an alternative gross or net tax, in substitution for a property tax. This plan involves difficult questions of apportionment, and the committee has not yet had the opportunity to test out and check up the precise manner in which the various simple arbitrary rules of apportionment will operate. Since the particular object of the apportionment is to avoid duplicate taxation, are niceties important or is any good rough-and-ready rule enough? Consequently it is not prepared to give a specific recommendation as to which of these rules is best suited to accomplish the task in the most acceptable manner. It, therefore, requests an opportunity to study this subject further.

It would also like time to develop further the method to be employed by the state in determining the proper rates for the alternative gross or net tax, in order that the burden imposed shall fairly approximate the burden imposed upon other classes of prop-

[7] In case of a gross earnings tax which is not exclusive, that is, which is imposed in addition to taxes on the property of the corporation, the legal situation is by no means so clear. There appears to be a difference of opinion as to how the Supreme Court might regard a non-exclusive gross earnings tax. This furnishes another strong argument in favor of the exclusive earnings tax.

erty taxed in other ways. Who shall determine the rate? Who shall equate it? Shall it be left to the legislature or not? [8]

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Chairman Special Committee on Taxation and Retrenchment of New York

J. G. ARMSON,
State Tax Commission of Minnesota

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Nevada Public Economy League

M. T. SANDERS,
Northern Pacific Railway Co.

SEPTEMBER, 1922.

SENATOR DAVENPORT, continuing: Now, gentlemen of the association, that completes the report of the committee so far as the first part of its work is concerned, the part that has to do with the taxation of public utilities. The committee has been in correspondence concerning this report considerably during the summer, and we thought we had pretty well in view the recommendations to make with respect to apportionment. We have had a pretty thorough discussion of the second part since we have been here, and we find that there are yet a good many things for this committee to learn with respect to this whole subject of apportionment; that while the principles appear reasonably plain, just what rules should be adopted are so largely matters of fact in connection with the experience of different states of the country, that the committee, after thorough consideration of the whole subject, last night made up its mind that it would ask the association to permit a continuation either of its life or the life of a similar committee, which might take this matter up, so that the whole subject of interstate apportionment might be gone into in great detail during the coming

[8] The committee would like further opportunity to inquire into holding companies in connection with public utilities. Of course this is a problem involved in the state taxation of business income generally, although probably more important in the case of public utility taxation in some states. Many of the holding companies are not of the pure type which merely owns the stocks of the subsidiaries without performing any function which might be considered as doing business. Instead, these so-called holding companies to which we particularly refer, take to themselves various functions which may be centralized with profit, such as financing, legal and accounting services, purchasing, engineering and research. We append this foot-note because the matter cannot be entirely ignored, although in most states it will not present a serious obstacle and should not stand in the way of the acceptance of the main principles arrived at in this report.

year. The time is long and the national tax association is eternal and the committee does not want to put itself in the position of making recommendations with respect to this very important matter of apportionment until it has a good deal further light as to the experience of some of the states of this Union. And of course it has come to the point where it has just reached agreement on this general plan which I tried to make clear to you this morning, which does propose an arrangement which is novel in these respects:

It provides an alternative net or gross earnings tax, which is to take no account of franchise, which is in substitution for property taxes, and at the same time it suggests a possible additional tax on pure economic profit. Now, this plan may involve — probably will involve—two separate systems of apportionment, and the committee has not yet had an opportunity, as I have said, to test out, to check up the precise manner in which the various simple arbitrary rules of apportionment will operate. Consequently, it is not prepared to make a specific recommendation as to which of these rules is best suited to accomplish the task in the most acceptable manner.

Then there are two other matters which the committee, if it is continued, or some other committee, if it shall be organized for the purpose, ought to take into consideration.

In the first place, further consideration should be given to the development of the method to be employed by the state in determining proper rates in a combination gross and net earnings tax, in order that the burden imposed shall fairly approximate the burden imposed on all other classes of property; and finally, Mr. Chairman and gentlemen of the convention, the committee thinks that the whole subject of holding companies, in connection with public utilities, should be gone into with a good deal of care, it appearing that the holding company is a development which ought to be taken cognizance of; that many of the holding companies are not of the purist type, which merely own the stock of the subsidiaries, but instead, a good many of these holding companies are taking to themselves various functions which may be profitably centralized, and as a part of the whole question of the taxation of public utilities, the committee believes this matter also should be considered in good time, and so, Mr. Chairman and gentlemen, I leave this report with you to be considered.

May I say one word more: The committee is very anxious to have the fullest discussion of these points which they have not yet been able to cover themselves, these points particularly that have to do with interstate apportionment, and I hope the discussion will be a discussion that will inform the committee. The committee has given you about all the information they have, and if you will help to inform the committee on the other points, we shall be glad of it.

MR. C. P. LINK of Colorado: I think that this committee is doing a wonderful work. It is a mammoth job. I move you, Mr. Chairman, that a vote of thanks be expressed to the committee and that they be continued for another year.

(Motion seconded)

CHAIRMAN HAUGEN: You have heard the motion, and I am sure that the conference is under great obligations to this committee for the voluminous report which they have submitted. Are you ready for the question?

(Call for the question)

(Ayes and noes)

CHAIRMAN HAUGEN: The ayes have it and the committee will be continued. I don't know whether that is a proper function of the conference or the association, but I take it that the association will confirm what the conference has done here this morning.

This question of the assessment of public utilities involves so many difficult features that the conference is under great obligations, as I said before, to the committee, and this committee consists of so much talent that I am at a loss who to call on for further remarks. Mr. Armson of the Minnesota tax commission has been connected with this work for many years, and he is the next man on the committee. Perhaps Mr. Armson would like to be heard for a few moments.

SECRETARY HOLCOMB: With the gentleman's consent, I should like to introduce a resolution, that is all.

CHAIRMAN HAUGEN: Mr. Holcomb has the floor at any time.

SECRETARY HOLCOMB (reading): *Resolved*, that this conference approves the recommendations of the report of the committee on taxation of public service corporations, to wit, that such corporations may be most equitably and satisfactorily taxed by reference to earnings, and that the details of such a method of taxation may be carried out by a combination of tax upon gross and net earnings.

(Motion seconded)

CHAIRMAN HAUGEN: That resolution will be referred under the rules.

(No response by Mr. Armson as called upon by the chairman)

MR. GEORGE LORD of Michigan: The report just made by Senator Davenport is, I think, the best report I have ever listened to on the important subject of taxing public utilities. It seems to me,

Mr. Chairman, that the report ought to be published separately in a bulletin and given publicity in the public press. If I am in order, therefore, I move it is the sense of this conference that the report be published in a bulletin and that it be given the widest publicity in the public press.

(Motion seconded)

CHAIRMAN HAUGEN: You have heard the motion which has been seconded; are there any remarks to be made?

(Ayes and noes)

CHAIRMAN HAUGEN: The ayes have it and the motion is carried.

MR. CHARLES J. TOBIN of New York: May I make an inquiry here? I noticed on the bulletin board a note to the effect that all resolutions to be acted upon should be handed in by noon today. I find, in looking over the program, that there are several committees yet to report, and they might find it necessary to ask that resolutions as concerns their work be made a part of the final result of this conference, and I fear that we may run into a difficult situation if we are to tie our hands by saying that no resolutions may be introduced after this particular session.

CHAIRMAN HAUGEN: Has the chairman of the resolutions committee some suggestions to make in that respect?

MR. H. P. SNEED of Louisiana: The original suggestion was that the resolutions be handed in early so there would be plenty of time to act upon them, but I think the committee is willing to handle any resolutions that come during the conference, irrespective of the time.

CHAIRMAN HAUGEN: There probably ought to be some limit. Supposing we make it tomorrow—that resolutions shall be handed in by the close of tomorrow afternoon's session. That will probably be satisfactory to the conference, and if there is no objection, the chair will say to the conference that resolutions should be handed in by the close of Thursday evening's session. It seems proper that they should all be in before Friday, that being the last day of the conference. Let that be considered the judgment of the conference.

We have a five-minute rule for general discussion, and the chair will try to enforce that rule as to the participants in the discussion of this public utility report that has been made. The chair suggested that Mr. Armson may have something to say. Is Mr. Armson of the Minnesota tax commission in the room?

MR. TOBIN: He was called to leave just a few minutes ago, Mr. Chairman.

CHAIRMAN HAUGEN: If Mr. Armson is not in the room, we have with us a man who represents probably the most universal public utility in the country, Mr. Francis N. Whitney of the Western Union Telegraph Company, and the chair will call on Mr. Whitney. He is a member of this committee.

MR. FRANCIS N. WHITNEY of New York: Gentlemen of the conference: As Senator Davenport has outlined to you, the committee found that it had a pretty large job to suggest to this conference a means of taxation of public utilities, particularly those of an interstate character; and it was our thought when we left the matter of apportionment undetermined, that it would be a wise thing to have this conference and the country at large criticize and digest this suggestion as to the methods of taxation of utilities. From that reaction and criticism we shall be in a position, we think, or, as Senator Davenport says, any committee which may succeed us, to attempt to lay down certain fundamental rules for such apportionment.

Personally I am in accord with the main part of the report, because of the many difficulties which come to a corporation which is operating in most if not all of the states. As the report has said, it would be surprising to some of you men to know the picayune methods which are prescribed by many statutes. It is quite true that utilities do receive bills and are required to pay taxes in all amounts from hundreds and thousands of dollars to a few cents. Where you have an assessment on a very small unit, such as we have in New York, with which state Senator Davenport and I are familiar, you have a condition which is not only harassing the taxpayer but is an infernal nuisance to the tax-collecting authorities.

MR. EDWARD LYLE of Georgia: How would you do away with the difficulty? You have to apportion this property. You would still have to pay as we pay, from two cents to one hundred thousand dollars. Now, the state officials have got to do it or you have go to do it.

MR. WHITNEY: There would be no difficulty in providing a method of apportionment within the state.

MR. LYLE: But I don't see how the payment is going to be avoided by that. You have got to apportion it to the various jurisdictions.

MR. WHITNEY: You would not pay a gross earnings tax to a minor jurisdiction; you would pay it to some central authority which would apportion it, and you might provide that the entire proceeds go for state government.

MR. LYLE: Then the state treasurer, you think, will do the work.

MR. WHITNEY: Well, there must be some way provided in the act for the apportionment of the yield, or that the yield shall be retained by the state, and it would make the payment to the individual tax districts. That is done in many ways in the states. It may be apportioned on school population or upon the value of property within the district or in some other way.

MR. LYLE: I should like to understand you. You mean you would deprive the smaller jurisdictions of their taxes and pay it all to the state?

MR. WHITNEY: No, I don't mean anything of the kind. We have not covered that feature at all. We were not asked to cover that. What we are trying to do is to solve the question of the taxation of an interstate corporation. We have not said anything at all about the yield.

MR. LYLE: I misunderstood the gentleman at first. I thought you were speaking about the distribution of the tax to the particular tax districts of the state. Now, we pay it out from two cents to one hundred thousand dollars. If you don't do it, will the state officials have to do it?

MR. WHITNEY: It depends on what you do with your tax. You can keep it as a whole; you may divide it between the state and municipalities; you can give it all to the municipalities or do whatever you choose to do.

MR. LYLE: I beg your pardon, the states will do what they choose to do.

MR. WHITNEY: I did not know what side of the fence you were on.

MR. LYLE: I am on that side.

MR. WHITNEY: Mr. Haugen has suggested that this report be discussed. Now, I think that is an especially wise thing to do, because we need that sort of help, we need to know what favor or disfavor this report is receiving and we wish that assistance in attempting to work out the matter of apportionment. That is, of course, a very difficult problem, and one that the committee, I don't think, fully appreciated until we got together last night and tried to work out some method, or discuss a method which had been suggested, and we found that we were right up against it, that we did not know enough about it, that we did not have the facts, and you cannot get very far unless you have sound basic facts. The report certainly should bring about a better understanding and bring about the assistance which we ask, that the association and

this conference asks from all its members, and it is with that end in view that we have gone as far as we have. We realize that it is not a finished product, and by the time the conference meets next year, with the added light which will be given by those who are interested and those who have practical administrative knowledge of the difficulties which are connected with the various types of interstate carriers or interstate corporations, we shall be able then to make a suggestion as to apportionment.

MR. LORD: I should like to ask Mr. Whitney or Senator Davenport what they will do in those states where the constitution provides that such property shall be assessed on an ad valorem basis of valuation. How are you going to meet that?

CHAIRMAN HAUGEN: I presume in those cases they might advocate a change in the constitution.

MR. WHITNEY: Mr. Haugen has answered the question. The only thing to do is to amend the constitution. Of course that is easier said than done, but at the same time the trend is in the direction of the recommendation made by this report, and constitutions are being amended and re-written, as I know, in a good many states.

MR. LYLE: Just one other question: Has the committee considered the gross earnings tax on property that is non-operative too? There are some properties of that sort. Have you considered that phase of the question?

MR. WHITNEY: No gross earnings at all, non-operating—I think that would have to be added to one of the questions that Senator Davenport suggested, the holding company. We will put that one on too.

MR. TOBIN: I should like to ask whether the committee has considered the competition of municipal plants as against privately owned plants. That is a problem that is peculiar in New York. They are to some extent under the jurisdiction of the public service commission, the publicly operated utility, both as to rates and otherwise, and I don't know whether in this particular problem of the taxation of the public utility the committee has considered that competition which the privately owned utility has from the publicly owned utility.

CHAIRMAN HAUGEN: The publicly owned utility in your state is exempt from taxation?

MR. TOBIN: Yes, but they are subject to the jurisdiction of the public service commission as concerns their rates, and I don't know whether this committee has considered the publicly owned utility as a part of the problem.

SENATOR DAVENPORT: No, Mr. Chairman, we have not been over that question at all. We know it exists.

CHAIRMAN HAUGEN: Oh, yes, it exists in Wisconsin as well as in New York.

MR. C. J. BUELL: I want to use a part of my five minutes to call attention to a certain matter. I quite agree with the gentleman over here that this is the best presentation of this case I have ever come in contact with anywhere, but I want to emphasize a certain point that Mr. Davenport brought out with some force, and that is this, that no matter how you do it, you are not taxing your public service corporation. In the nature of things it cannot be done. Mr. Davenport brought that point out with some force when he raised the question that in any case this is a tax upon the ultimate consumer or the original producer. He did not use those terms, but that is what it amounts to. That raises, of course, a very vital question whether it is your desire to add an additional burden to the ultimate consumer through the medium of taxing public service corporations. If that is what you are after, if that is what the ultimate consumers will probably stand for, without too much kicking, why then this scheme is probably the best that has ever been suggested, but I suspect the ultimate consumer is going to do some kicking before he gets through with it.

A DELEGATE: What good is it going to do him?

MR. BUELL: They will probably abolish the whole thing before they get through with it. The ultimate consumer is the final arbiter in the matter. They have the votes, and it is only a question of when he becomes sufficiently intelligent that he will be master of anything he has a mind to.

CAPTAIN W. P. WHITE: You mean sufficiently misinformed.

MR. BUELL: No, intelligent. In Minnesota we have the gross earnings tax on railroads. The farmers put it over. If the farmers had to do it today, they would not put it over. Now, so much for that. Your whole scheme is a scheme of putting additional tax on the consumer or the original producer. In Minnesota the farmer gets it both ways. He is raising crops that he must put into the terminal market and consequently he must pay the tax necessary to get his product into the terminal market. As an ultimate consumer he must pay the tax that comes back on him when he buys the stuff with the money that he gets from his product.

CAPTAIN WHITE: Why shouldn't he?

MR. BUELL: Why should he? He is paying a tax on everything he has in the world now.

CAPTAIN WHITE: So is everybody else.

MR. BUELL: No, sir, you are wrong, sir.

CAPTAIN WHITE: You are misinformed in that matter, that is all.

MR. BUELL: We have one concern in the City of Minneapolis that is collecting two hundred and twenty thousand dollars a year ground rent for the use of a little piece of land over here and not paying one cent of tax to anybody anywhere in Minnesota; so you have to amend your proposition. There is just one other point in that connection. When your public utility becomes publicly owned, which is more or less in the future, probably for some public utilities in the very near future, and for some in the remote future, then you are going to be confronted with the question of not getting any taxes at all out of them. That is another question that the committee will probably have to consider before they get through. That is all I care to bring out, those two points.

MR. TOBIN: I was not permitted to finish what I started to say. I wanted to bring back to the attention of the committee the necessity of inquiring into the taxation of publicly owned utilities in conjunction with this question. Now, we have a water company that extends through various taxing districts, and it not only supplies water to one particular city or village, but it also supplies water to other cities and villages, and there is a gradual encroachment of these utilities into the private field, and I believe it is quite proper that the question of the taxation of those utilities which are in competition with the privately owned utilities should be taken up and considered by this committee.

CHAIRMAN HAUGEN: Let the committee take that into consideration when they sit again. We better not drift off into the question of a single tax, because we know that is interminable. Mr. Alexander of the Boston & Maine Railroad is present with us. He has the floor.

MR. T. ALEXANDER: I have some temerity about expressing my opinion about the report which Mr. Davenport and Professor Fairchild and the other members of the committee have brought in. Nevertheless I do want to say that it seems to me as though the report certainly was making an effort towards progress in the right direction. I am not saying that with reference to the gross earnings part of the report. I am referring to the fact that the report does distinctly affirm and recognize that public utility corporations are creatures for the purpose of making profits, not necessarily profits for stockholders, but profits for the communities which they serve. And that is indicated by the fact that perhaps for the first time has a body of this sort brought in a report which has received any recognition—that is, so far as I know, I may be in error—which even attempts to recognize the principle of the taxation of public utilities upon a net earnings basis.

Now, at Bretton Woods I took the ground in a few remarks which I made to this body that net earnings or income, one or the other, or at least a recognition of the necessity of net earnings as a basis for taxation, must be considered in any legitimate and adequate and equitable form of taxation, and I think I stirred up some opposition amongst some few tax administrators who were perhaps wedded to the ad valorem or some other theory. I think Professor Fairchild perhaps at that time made some remarks to the effect that the gross earnings basis was the only basis which in his opinion was proper at that time. I am glad that he has progressed since then. Now, I do want to say a few words about this question of gross earnings-net earnings proposition being injected into taxation.

In the first place, I don't like the term "gross earnings—net earnings" as a term for a form of tax. I don't like this proposition of mixing the gross earnings with net earnings as a form of a tax to be adopted by this association. In the first place, I cannot see why there should be any necessity for the consideration of gross earnings in a public utilities tax. I am perfectly aware that you gentlemen who are administrative officials say that the practical necessities of the states require some income from public utility corporations, whether they are making any net earnings or any money or not. Granted. Anybody will admit that the state has to live, and I don't think that any intelligent public utility or railroad attorney or accountant or officer would claim at the present time, with the state taxes as they are, that the state should not receive some revenue even from a utility or a railroad or other corporation which was not making any net earnings. But why is it necessary to base your payment to the state for the privilege of existing, if you please, upon gross earnings? Where is there any equity in that? This is the result, that you are basing your tax on gross earnings as a purely arbitrary proposition, and it must work a great deal of inequity. Take, for instance, in 1920 in Maine, which has the gross earnings tax, the Bangor & Aroostock railroad made far less gross earnings than the Boston & Maine did. The Boston & Maine railroad made very much greater gross earnings, yet the loss of the Boston & Maine was much greater and still we paid a tax three or four times greater than the Bangor & Aroostock upon the gross earnings. So in this case, say you have one per cent as a minimum on gross earnings. In the case where two corporations are losing, that corporation which loses the most, because it has to have the greatest amount of business, would necessarily pay the greatest tax, and that seems to me entirely inequitable, and I cannot see the necessity for it, because you could have a definite minimum to be paid to the state as a part of your net earnings tax without reference to gross earnings, which would be far more equitable to my mind. I thank you.

Mr. Edward P. Doyle of New York: I want to satisfy my friend here in the convention as to the attitude of the ultimate consumer on any proposition that might seem to accord reasonable treatment to public utility companies. A friend of mine went into a saloon in New York—almost obsolete now—to get a cigar. There were three longshoremen at the bar. One of them said to the others, "isn't it a rotten proposition that we have to pay six cents fare in the subway?" And the others agreed that it was, and then they turned around and paid four and one-half dollars for three rounds of drinks.

Chairman Haugen: The question we should like to discuss here more particularly is the question of allocation to the different states of the value of the public utility after its valuation has been found as a unit. Now, the chair suggests that there may be a number of members of the association who have something to say on that question, and let us confine the discussion for a few minutes at least to that question which was invited by the committee.

Professor Fred R. Fairchild: That is just the question I wish to bring more specifically to your attention. I think all members of the committee feel somewhat ashamed that we have had to come before you today without anything to report on the subject of apportionment. That was the original problem that was set before us. We felt that it would be a case of the tail wagging the dog to study apportionment without first investigating the whole subject, and now, after considering the whole thing a year, after you gave us the dog to play with, that animal has grown so large that he seems to have wagged the tail off entirely, and we come today without any report whatever on apportionment. It would be a great help if we could have right here some suggestions from those members who are practically engaged in the business of apportionment. I was glad to hear from Mr. Alexander, and I am sure that there are other men here who are directly connected with the railroads and other utilities, on this matter of interstate apportionment. Now, the problem can be boiled down, I think, to this: I have always supposed for the last eight or ten years, in particular since we overhauled our public utility taxes in Connecticut, that the most equitable way to handle the matter of apportionment was to select some simple, even arbitrary, criteria, which would apply to each particular class of corporations, for instance, the all-track mileage basis as a means of apportioning the earnings or property of railroad corporations; miles of wire for telegraph companies and long-distance telephone companies; the number of instruments or stations for operating exchange telephone companies, and so on. All of those were adopted by the Connecticut legislature in 1913 and 1915, and appear to have worked with very general satisfaction up to the present time.

Now, the advantages of those methods are their extreme simplicity, the fact that there cannot be any argument or question about the apportionment. After once determining the unit value or the unit total gross or net earnings, whatever it may be, the apportionment is a mere matter of calculation which anybody can perform, having once gotten the facts. The disadvantage, of course, of that method is that it is more or less arbitrary; it is a rough-and-ready rule of thumb. The more precise method would, of course, take care of every shipment of freight, every passenger ticket, and allocate to the several states just exactly the part to be assigned on each of these transactions.

Now, I was under the impression that the complications and the enormous labor of applying that sort of more refined and exact apportionment made the method rather out of the question, but recently things have been brought to my attention that have tended a little bit to shake my faith in my earlier position; and that I think really is the question that confronted the committee in its last periods of discussion, whether or not we should direct our attention toward a simple but arbitrary rule-of-thumb method of apportionment, selecting that which best applies to each class of corporations, or whether it is possible and desirable to try to seek a more refined, precise method, at the risk of a very considerable degree of complication. Now, I think the people best qualified to answer that question are the taxing officials who have this thing actually to administer in certain of the states, and perhaps even better qualified, the members of the public utilities who have to pay the taxes and deal with the matter of apportionment. I think, Mr. Chairman, if some of those gentlemen could tell of their experience, it would be a great help to all of us.

Chairman Haugen: Mr. Lyons, chairman of the Wisconsin tax commission, I see, is in the room. I will call on him.

Mr. Thomas E. Lyons of Wisconsin: I hadn't thought of discussing that particular question. I do want to say a word on the report, which is the only recommendation before us. I join with the members of the conference in acknowledging the thoroughness and excellence of the result. I was brought up with some faith in the ad valorem system and am inclined to favor that rather than gross earnings or net earnings, for some of the reasons stated, but among others, as to the difficulty of determining just what rate will equate the tax upon utilities with the tax upon other forms of property, and who shall determine that rate. Now, the committee in terms did not cover that point. It was referred to, but it was left open, and it seems to me there is the crux of the whole matter, who shall determine the rate which will equate the burden of the utilities in the same degree and to the same extent as other prop-

erties and how shall it be done? If left to the legislature, which is the common thing, it is a mass meeting disposition, influenced by prejudice, caprice, ignorance and several other things; and if it is left to the commission, as I believe it should be, if you adopt that thing at all, it would be based on considerations which they now have before them in assessing on the ad valorem basis. I regard that pretty near the crux of determining whether or not a gross earnings or net earnings tax shall be the basis of a utility tax system, or whether it shall be the ad valorem system. Now, I want to point out that these two terms, that is, the earnings and the ad valorem bases, are not inconsistent in their nature, that everywhere in the valuation of all classes of property, earnings is a proper element, preferably net earnings, of course—that element is in fact used in determining the assessment under ad valorem laws—so that these two considerations are not exclusive; and, as the chairman very well knows, earnings are not only considered in the assessment of utilities in Wisconsin and in several other states, but they are the major consideration in arriving at the value.

Now, on the basis of apportionment, I shall detain you but a moment; all I wish to do is to explain that instead of adopting a single system in Wisconsin, where the ad valorem system has been in effect for many years, where apportionment is necessary, we have used several elements. The all-track mileage is a rough-and-ready test, as Professor Fairchild says, and as a single one possibly as good as any other, but it is not at all uncommon to have the mileage in one state, South Dakota, for instance, very much less profitable than in Iowa, and when you come to determine the value of an interstate road extending into both of these states, the all-track mileage would be to my mind quite a defective test. Perhaps the defect would be more pronounced between Iowa and Arizona or Nevada, states where the mileage is long and the traffic light, except as to interstate traffic. The mileage test would not be a fair index of the value for the portion of the tax which should be paid to these two jurisdictions. Therefore, we have added the gross earnings as well, which is neither accurate nor complete in itself, but we have put the two factors together. We have also added the net earnings in the different states. And then there is one other factor—car mileage—which in the amount of actual service rendered is as safe as any of the others, so our apportionment is made by a combination of these different elements in the case of railroads. I will not take the time or attempt to discuss here at length, or give the reasons why they are significant in the formula, but they are all used, and for one reason or another we have not had a great deal of difficulty with the railroads or utilities in making these apportionments.

CHAIRMAN HAUGEN: I should like to add a word to what Mr.

Lyons said. There has been another element taken into consideration, I think, in the last two or three assessments in Wisconsin, which I think is quite important, and that is the ton and passenger mileage in the different states. By using these combinations and applying them to the unit value of the entire property, we have been enabled to assign to each state its proportion and account for the total valuation. Secretary Holcomb wishes to say a few words.

Secretary Holcomb: Mr. Chairman and gentlemen, I dislike to inject myself so much into this meeting, as I have to. This matter here is something that touches me in my own private practice, so that I want to say a few words. As I understand it, the committee has rather limited the discussion at the present time for a few moments to the question of apportionment. I understood that the whole report of the committee was before the conference. I am very anxious to have everybody talk about the full report, but, of course, I remember that when this committee was organized it was organized with the distinct purpose of taking care of interstate properties, and that was done for a reason which does not appear to have been suggested here. It was not so much for the reason that we wanted to be absolutely accurate, but it was to avoid duplicate taxation. That is a little different slant, you see. If you can get an interstate agreement as to apportionment, the precision and nicety of the thing are not so prominent in a country-wide property, if you are thus able to eliminate the taxation of the same property in two states. That is the whole problem in apportionment, and that renders the matter of apportionment somewhat more simple.

Now, apportionment has two angles. One is apportionment between states, and the other is apportionment between localities within the state. Those two elements are very greatly confused, as I look at it, in my consideration of the matter; one is wholly distinct from the other. The matter of interstate apportionment is what we are considering. The matter of apportionment as between localities in a state is a totally distinct thing, which to my mind ought not to be the concern of the utility company. It is a matter within the province of the states, how they shall apportion the taxes that they receive from a state-wide utility. We start with the assumption that we are dealing with a state-wide utility, that would exclude small utilities, trolleys which are located in a single city but which are not of a state-wide character. The assumption is that the reason for avoiding complications is because the ad valorem system is complicated and not because it is unreasonable or unjust. If we assume that, then we must assume that the yield of the tax on the earnings, if that be the method, is a matter that is not the concern of the utility. In my consideration of the matter for a good many years, as you remember, I have always suggested

that the yield be apportioned on some basis, such as school enumeration or something which would give it a wide distribution, in conformity with the original assumption that it was a state-wide affair and did not belong to any particular locality. So much for the apportionment in its general principles.

In its details I should agree with Mr. Lyons. If possible, a combination of two or three factors should be applied, because in dealing with those matters, the more factors you can bring to the problem, the better equality will result. One inequality washes out the other. So, in the particular utility with which I am concerned, I have advocated the combination of stations, operated wire mileage, and gross receipts, and testing out a composite of those three, it has not reached a very bad result. Of course I am only familiar with the dealings I have had with state officials, who have applied it as in Minnesota. It so happens that I recently had an interview with the public examiner of this state, or his agent. They have a terrific time attempting to pro-rate the individual shipments. You can imagine what it means with a shipment running through the state and running from the state out of the state, and running from out of the state into the state, to attempt to localize and segregate the individual receipts, a stupendous undertaking; and I got the impression from this individual that it really resulted in a great many arbitrary assumptions. If you once admit those assumptions, your conclusions follow, but I don't see that it gets anywhere near the accuracy that is implied in the process, so that it would seem to me better to use some simpler method, even at the expense of going through a process which looks very accurate but in fact is not.

The essentials of this problem, as I look at it, are that if we assume a gross earnings tax, which I am committed to, by the remarks I made in 1911, and which recent events have shown me to be sound—I don't think in all my experience of a great many years that I have seen the fallacies of the ad valorem system so pronounced and so plain as they have been shown to me to be this year—as I say, if we assume you have a gross earnings-net earnings tax, then your problem is as Mr. Lyons suggested, with what property shall you make comparison? That stands at the threshold of the inquiry, and I don't know what the solution is of that problem. We have been accustomed to saying that equality arises when you tax the railroad on the same basis as a farm, but for my part I see no relation between the character of the property represented by land under private ownership and under non-regulation and between rails and ties put together in the form of the business of a regulated utiilty. There seems to be no relation, no common ground between them, so that you have to take an arbitrary stand, and you have to equate the problem by considering the utility with-

out regard to other forms of business, and to do that you must deal with the earnings as a starting point in your problem.

CAPTAIN WHITE: I notice that the difficulty seems to be between the method of taxation and the method of distribution. I think we should all agree with the last speaker that the method of taxation should be on gross earnings rather than on net earnings. Now, in regard to the matter of distribution, that is dependent upon the service that might be rendered in a part of the community, and what may be justly allocated to that part of the community is dependent upon the property that is in the community that is used for that service. In Massachusetts we have a very large property holding by the railroads for terminal purposes. The terminals are not for the purpose of handling the freight or the transportation problems of Massachusetts, but they involve the transportation of a great deal of material that goes into other states. Now, if we tax the gross earnings of the railroad and simply distribute that according to mileage, Massachusetts would get her fair share of taxation, but if you are to take into consideration the value of the property that is involved in the state in that railroad and allocate it according to that, I think you will arrive at about as fair a distribution of the tax as can be obtained.

CHAIRMAN HAUGEN: The chair would call on Mr. Lord as to how the gross earnings tax is apportioned in the State of Minnesota.

MR. LORD: I would suggest to Mr. Haugen that there is a luncheon at a quarter after twelve. It is now three minutes after twelve.

CHAIRMAN HAUGEN: Then I will turn the gavel over to Mr. Lord.

CHAIRMAN LORD: While there are a number of others who may desire to speak on this subject, I will recognize Mr. Moffett, of the local committee here, to make an announcement.

(Mr. Moffett makes announcements)

CHAIRMAN LORD: I think in order to avail ourselves of the invitation extended by the civic and commerce association, it will be necessary for us to adjourn at this time until two o'clock this afternoon, and while I know there are a number who would like to speak on this subject, we shall have to draw this meeting to a close at some time, so I think we will stand adjourned until two o'clock this afternoon.

(Adjournment)

SIXTH SESSION

Wednesday Afternoon, September 20, 1922

Chairman Lord: There is a sight-seeing schedule for five o'clock, and in order to give everyone an opportunity to take it in I am going to try to push things right along, although I do not see my good friend Captain White here on time.

Mr. J. E. Saint of New Mexico: Captain White is drumming them up. He pushed me in here.

Chairman Lord: The conference will be in order. I will recognize Mr. King. Unfortunately at the time we adjourned I had to decline to recognize him, and I think that he is entitled to that courtesy at this time. Mr. King of New York.

Mr. William H. King of New York: Mr. Chairman, I should like permission to submit to the secretary some brief notes of the experience in New York on the subject of apportionment, and with respect to the report of the committee on the taxation of public utilities, as brought out in our situation there and in the litigation which we have conducted. I will hand that to the secretary without any further statement.

(Mr. King's statement is as follows.—Ed.)

The City of New York, which I represent at this conference as an assistant corporation counsel of the law department, in charge of the division of taxes, has a vital interest in the subject of taxation of public utilities; and in the litigation which I have conducted for the city, the courts have been called upon to consider the apportionment of property between different tax districts which has been referred to in this discussion.

In the State of New York the principal tax imposed on public utility corporations is known as the special franchise tax, fixed by the state board of tax commissioners but entered as real estate upon the tax books of the several tax districts of the state as against the special franchise of such corporations in the district and payable to the district. Thus any change in the law in force would materially affect the revenues of the cities.

The special franchise tax takes into consideration two elements, namely the value of the intangible right or permission to operate the franchise in the streets and public waters, and the value of the

tangible property of the corporations in such places. The value of the intangible right has generally been determined by what is known as the net earnings rule, namely by capitalizing at a fair rate the net earnings obtained after due allowances for depreciation, a fair return on value of property in operation, etc.

In addition to this tax the corporations pay locally the real estate tax on their real property such as offices, plants, etc., not in the streets and public places. They also pay a general franchise tax to the state.

The proposal made in the report of the committee that such corporations should pay an *exclusive* tax, fixed upon both gross and net earnings, leaves out of account the real estate tax and, as has here been suggested, meets with constitutional objections. It also meets with many practical objections.

The elimination of the local real estate tax would vitally affect local revenues and in many cities the debt limit and borrowing capacity. This is particularly true in large cities like New York, which is dependent not only upon the real estate tax on properties of such corporations *not* located in streets and public places, but also upon the real estate tax for a long period imposed on the special franchises of such corporations, including the tangible property in the streets and the value of the intangible right.

Certainly in no locality should such corporations be relieved of the ordinary real estate tax locally assessed and paid, even if any other tax be based upon gross and net earnings. In the case of an individual, he is required to pay a tax on his real estate and also a tax upon earnings or personal property in some form. Similarly business corporations pay a tax on their realty and also upon their income, franchise or personal property. There is no difference nor any valid reason for relieving public utility corporations of such real estate tax, even if it were constitutional and practicable; and the reasons assigned of many tax bills and many local assessors, can have no force whatever, apart from tangible property in streets and public places, rights of ways, etc., any more than with respect to an individual or business corporation owning real estate in various parts of a state.

The further subject of apportionment referred to in this discussion but not reported upon by the committee, is one which the courts have passed upon in our special franchise litigation in New York. It arose particularly in two cases, one relating to the value of the special franchise in Park Avenue, including the terminal of the New York Central Railroad, and the other to that of the New York Telephone Company in New York City.

In the first New York Central case the court disapproved of the so-called track mileage basis of apportionment and upon lack of proof confirmed the assessments made. In the second New York

Central case, the railroad abandoned any method of showing error of apportionment, but claimed over-valuation of bridges and inequality of assessment, as compared with assessments of other real estate. The city, however, produced what the court regarded as the best evidence of value of the intangible right in the form of a lease by that railroad to another railroad—the New York, New Haven and Hartford, to operate over Park Avenue to the terminal, which lease capitalized on the theory that the right was worth as much to the New York Central as to the other road, showed that the intangible right alone was far in excess of the assessment.

In the New York Telephone Company case the city was prepared to show that upon the company's own methods of apportionment in its business, including that solely within the city and that extending beyond the city, the assessment, which exceeded any ever before or since imposed, was not excessive, but upon the trial the company abandoned any claim of error on the ground of wrong apportionment and rested on legal and technical grounds which were overruled, no appeal being taken from the confirmation of the assessment.

It may be suggested, therefore, in the light of these two cases presenting the only questions of apportionment raised in such litigation, in one of which the mileage basis was expressly disapproved by the court, that instead of attempting to follow such a basis, the business dealings and methods of the public utility corporations be examined as to leases, accounting, allocation of profits and expenses, etc., in order to determine fair and just apportionments.

CHAIRMAN LORD: Unless there is objection, the communication will be received and referred. The luncheon, I know, has delayed the delegates somewhat. Captain, what success did you have?

CAPTAIN W. P. WHITE: Mr. Chairman, I think we might proceed with the meeting, because those who are out in the lobby are in the process of assimilation. Apparently they are very much like the cow and cud, so that the active minds might as well continue the meeting.

CHAIRMAN LORD: We have this afternoon for consideration the apportionment between states of taxes on interstate mercantile and manufacturing business. This is a matter of much importance, and I am going to ask to preside this afternoon a gentleman who for a great many years has been looking at the taxation problem from the standpoint of a great public utility corporation. It is a pleasure to state that my acquaintance with this gentleman justifies me in saying that he is one of the big open-minded men who deal with taxation problems in a broad-minded way. I take great pleasure in performing the entirely unnecessary duty of introducing to you the tax attorney of the Western Union Telegraph Company, Mr. Whitney of New York.

Mr. Francis N. Whitney, of New York, presiding.

Chairman Whitney: Gentlemen of the conference: I appreciate very much what Mr. Lord has said, and I also appreciate the compliment of calling upon a representative of the public service corporations to preside at one of the sessions of the conference.

The subject for discussion this afternoon is based primarily upon a report to be made by the committee of the association on the apportionment between states of taxes on interstate mercantile and manufacturing business. Mr. Lamb, the chairman of that committee, is here, and will make the report for the committee — Mr. Lamb of Pittsburgh.

Mr. Carl S. Lamb of Pittsburgh: Mr. Chairman and gentlemen of the association: You will find in each of the chairs a little pamphlet which the committee has prepared showing the recommendations of your committee. The committee's report will deal largely with the development of these recommendations on the part of your committee. It was thought best to have in your hands a copy of the recommendations, so that while this report is being read you might be able to better follow the committee's recommendations.

REPORT OF COMMITTEE ON THE APPORTIONMENT BETWEEN STATES OF TAXES ON MERCANTILE AND MANUFACTURING BUSINESS

This committee was appointed at the 1920 conference at Salt Lake City to assist the Model Tax Committee, by giving intensive study to the question of apportionment between states of income derived by mercantile and manufacturing business conducted in more than one state. This subject is dealt with in Sections 308, 309, 310 and 311 of the model business income tax.

Your committee has decided to recommend some departures from the methods of apportionment provided in those sections, but in doing so it desires to state that such is in no sense a criticism of the work of the Model Tax Committee. It is only because that committee has recognized the extreme difficulty of the question and the necessity for further study that this committee ventures to recommend certain changes, and these recommendations are made simply for the consideration of the conference and the Model Tax Committee, without assertion or assurance on the part of the members of the committee that it has reached the final or best solution. The methods of apportionment now provided in the model business income tax would make a substantially fair division of taxable income between the states and do substantial justice to the taxpayers, assuming that all states into which the taxpayer's business

extends should adopt this same law. If the methods of apportionment herein recommended are any improvement, it is believed that this will be found mainly in the greater recognition given to existing legislative tendencies and to the importance of harmonizing such tendencies, if the recommendations are to be generally adopted.

The committee did a considerable amount of work by correspondence prior to the Bretton Woods conference in September, 1921, and during the conference held a number of meetings, at some of which it was assisted by the presence and suggestions of other members of the association, particularly Mr. Thomas E. Lyons, of the Wisconsin Tax Commission, and Prof. Charles J. Bullock. The committee felt itself unable to make any final report to the Bretton Woods conference and was accordingly directed to continue its work and report at the next annual conference. Since that time the committee has held meetings at Chicago and Minneapolis, as a result of which this report is now presented. The specific recommendations of the committee are incorporated in revised drafts for certain sections of the model business income tax and personal income tax, which are attached to this report, but these drafts would be meaningless and cannot be properly judged without a rather full discussion of the questions involved and the considerations which influenced the committee in its various decisions. The remainder of this report will take up these various matters substantially in the order in which they were considered and decided by the committee.

1. Existing Apportionment Laws

The question of apportionment has come up mainly in connection with corporation excise, franchise or license taxes, levied on the portion of the capital stock of the company or the portion of its income allocated or apportioned to the state by some method which is assumed to be fair as between states. However, a review of existing legislation, including formulas adopted by regulations of the taxing bodies, reveals great differences of opinion as to what constitutes a fair division and a wide range of formulas for carrying out these ideas.

An enumeration of the factors entering into different formulas and given more or less weight therein, would include tangible property, intangible property, receivables, sales, manufacturing costs, wages, salaries, purchases, etc. At one extreme we find states, where presumably manufacturing predominates over merchandising, which think it fair to apportion the income on the basis of the location of the tangible property alone. Under this formula, if the factory is in one state and the products of the factory are sold through a rented sales office in another state, orders being filled by shipment direct from the factory, there is no tan-

gible property in the state where the selling business is conducted, except insignificant office supplies, and practically the entire income would be allocated to and taxed by the state where the factory is located. At the other extreme would be found states, where presumably merchandising predominates over manufacturing, which consider it fair to make an apportionment on the basis of sales alone. Under this formula, in the case above supposed, practically the entire income would be allocated for taxation to the state of sale and none to the state of manufacture.

In this situation it is evident that the taxpayer would be taxed on the same income in two places and practically pay on two hundred per cent of his income. Some states have gone to even further extremes, by authorizing or permitting the tax officials to use alternative methods of apportionment, either on the basis of tangible property alone or sales alone, thus taking advantage of the most favorable rule in each particular case. While the case supposed is an extreme one, the same thing happens in a greater or lesser degree, wherever business is carried on in two states having different formulas for apportionment. No one can blame the taxpayer for using every legal effort to get out from under, by the expedient of separate corporations in the different states or otherwise, and no one can expect these expedients to be discontinued until the various states can get a little closer together in their ideas of what is a fair division. It should be recognized that this is primarily a question of comity between states, not merely a question between the state and the taxpayer, to be settled without regard to how the taxpayer is being treated in other states.

The tendencies to shift the basis of taxation from capital stock to income and to increase the amount of the taxes and to bring unincorporated business concerns under the law, have greatly increased the importance of the apportionment question both to the states and to the taxpayers. The question is a very live one at the present time. Different states are experimenting with different formulas and changing them from year to year. The whole matter is in a stage of development and evolution. It is fair to say, however, that the great majority of states have not gone to either of the extremes above mentioned and are experimenting with formulas giving recognition to the two main elements of investment and business activity, measured in various ways and combined with varying weights. The fact that the problem of allocation and apportionment is still in the development stage, reasonably accounts for the scarcity of court decisions that might, if made, materially clarify the problem under consideration.

2. A Uniform Method of Apportionment in all States the Prime Essential

The members of the committee are all agreed that from the standpoint of the taxpayer, uniformity between states is by all odds the most essential requisite. It might make little difference to the taxpayer whether he is taxed on seventy-five per cent of his income at the place of manufacture and twenty-five per cent at the place of sale, or *vice versa*, so long as he is taxed only on one hundred per cent altogether. The fairest apportionment rule conceivable would be of little help to the taxpayer if only one state adopted it and the others continued to use a different rule. It seemed essential to the committee, therefore, that any formula now recommended should take account of existing legislative tendencies and consider the line of least resistance; that is, on what basis they may be most easily compromised, with a view to increasing the probability of general adoption of a compromise rule. From this standpoint particular consideration might well be given to the Wisconsin, Massachusetts and New York practice, as these states have been pioneers in income taxation; have given considerable study to the problem of apportionment, and their legislation and practices serve more or less as models for other states.

3. No Separate Income in Each State. No One Correct Way of Apportionment

Items of interest, rents and dividends come from a definite source which it is entirely feasible to allocate specifically to one state or another; but this is not true of the great mass of the income of a manufacturing or mercantile company—that is, the profit derived from the sale of goods. Where material and goods are collected and purchased by an office in one state, converted by manufacture at a factory in a second state, and distributed and sold through an office in a third state, it is evident that the investment and activities in all three states have yielded a certain trading profit. At particular times this trading profit may be enhanced by the efforts of one department more than another, by cheap purchasing, efficient manufacturing or successful salesmanship, but no one can measure the ups and downs of these elements and all that can be said is that they are all necessary and all contribute to the trading profit, which could not have been made if any part of the organization had not been functioning. Obviously, in such cases there is no pre-existent separate income for any state, which can be ascertained by looking in the right place or by the use of any particular accounting method or formula. The committee emphasizes this obvious fact for two reasons: first, that the methods of apportionment hereafter recommended may not be unduly criticized, simply on the ground that they are arbitrary. All methods of apportionment of trading

profits are arbitrary — the cutting of the Gordian knot. In the second place, this fundamental fact may well be borne in mind in any state disinclined to compromise, for the sake of uniformity because it believes it already has the one right rule; there is no one right rule of apportionment, notwithstanding that there probably are a number of different rules, all of which may work substantial justice. For the present purposes the only right rule of procedure is a rule on which the several states can and will get together as a matter of comity. Getting together by the uniform adoption of some equitable method and finding the right rule of apportionment are, in our opinion, synonymous.

No consideration of the source of trading profit would be complete without mentioning the school of thought which holds the sale to be the source of the entire income. The reasoning is that the net income is a portion of the gross income, and as all gross income results from sales, and as there is no income until sale, the place of sale is, therefore, the source of all income. This view overlooks a distinction, well recognized in accountancy, between the place of realization of profits and the real source of such profits, —that is, the investment and the activities preceding the realization. (See *Journal of Accountancy,* Mch. 1922, p. 196.) Nevertheless, it is a view which has had a very general influence on apportionment legislation and practice, and still has. However, it has been definitely discarded by the United States Supreme Court in the recent case of *Underwood Typewriter Co.* vs. *Chamberlain.* 254 U. S. 113. This case involved a Connecticut income tax law, under which a tax had been imposed on a portion of the profits of a company having its factory in Connecticut but making all sales from offices outside of Connecticut. The court definitely discarded the argument of counsel that the net income was derived wholly at the place of sale. The court said: "The profits of the corporation were largely earned by a series of transactions beginning with manufacture in Connecticut and ending with sale in other states." And the court held that the State of Connecticut could tax the portion of the total net income "reasonably attributable" to the State of Connecticut. The words "reasonably attributable" will be the starting point for many court decisions in the future and they may well be the starting point of any rule of apportionment. It was presumably in view of the *Underwood* case that the 1921 United States Revenue Act adopted a different conception of the source of income from that contained in the 1918 Revenue Act. The 1918 Revenue Act taxed the entire profits made by foreign concerns selling goods in this country, while the 1921 Revenue Act recognizes that a portion of the profit is attributable to the manufacture of the goods in a foreign country before shipment to the United States for sale.

4. Specific Allocation of Trading Profit vs. Statutory Apportionment Formula

While all methods of apportioning the unit trading profit are arbitrary, it may be granted that some methods are more arbitrary than others and that the least arbitrary results may be obtained by individual study of each business. In many cases, no doubt, inter-department prices and accounts could be set up which would reflect departmental profits, aimed to approximate the assumed profit which each department would make if it were an independent concern instead of a branch of an integrated business. Even this method, however, involves many estimates and assumptions, and in many cases the division of the business operations between states might be such as to make this method impracticable. The individual handling of each business along the above lines will be referred to hereafter in this report as specific allocation, in contrast to apportionment by mathematical formula applied direct to net income. The most serious objection to this method is a practical one. If done properly it would involve a detailed study of each individual case, prohibitive in cost to the state and unduly expensive and annoying to the taxpayer. Furthermore, this same study would have to be repeated in every state where the taxpayer carried on any portion of his business, and it is hardly likely that the specific allocation made by the tax commission of one state would be identical with that made by the tax commission of another state. Lack of uniformity between states would creep in and the divergencies would probably increase as time went on. The members of the committee are, therefore, unanimous that a uniform and fair mathematical formula for apportionment of the net trading profit, incorporated in the statute of each state, is preferable to leaving the entire matter to be determined individually in each case or under rules and regulations of the tax commission. It is believed that such a formula will be acceptable both to the taxpayer and to the commission in more than ninety per cent of the cases and, if so, progress has been made and time and expense saved for study of the remaining ten per cent of the cases, where it may be claimed that the general formula is inapplicable.

5. Property and Business—The Two Factors to be Considered in Any Apportionment Rule

All merchandising and manufacturing involve two main elements: the investment of capital in tangible property and the recurrent turning over of money in goods, materials and labor, the product being sold and the money being reinvested in the same way. Both of these factors contribute to the income. A majority of the members of the committee are agreed that a fair apportion-

ment rule, to be applied generally, cannot be devised by the consideration of property alone or business alone. Furthermore, the inclusion of both elements is in line with the main legislative tendencies.

6. Relative Weight to be Given the Factors of Property and Business in the Formula

A number of states have used a rough-and-ready formula, which involves in substance the adding of the value of the taxpayer's property to the dollar value of his annual business. Assuming for the moment that the business is measured by sales alone, the effect is to give a most variable weight to the two factors of property and business. For example: where a business has a slow turnover, the yearly sales about equaling the property used in the business, the two factors are given equal weight. If, however, the business has a rapid turnover, the sales being five times the property, the formula in effect apportions one-sixth of the income on the basis of property, and five-sixths on the basis of sales. The members of the committee are all agreed that these variations are fortuitous for present purposes, and have no significance as bearing on the source of the income or the relative importance of the different branches of the business. It seems more logical and fair to give the two factors of property and business a fixed weight in the formula. This seems in line with the best recent thought given the matter, although as yet there is no unanimity as to what the fixed relative weight should be.

The present Massachusetts formula provides that one-third of the net income shall be apportioned by reference to the location of tangible property. On the other hand, the model business income tax, as now tentatively drafted, provides for apportioning two-thirds of the income by reference to the location of the tangible property.

The committee has decided to recommend a middle ground; that is, to give the two factors of property and business equal weight. This is done for several reasons: Fifty-fifty is fair in the absence of evidence to the contrary and it does not seem possible to demonstrate either that the property factor should have a weight of one-third or two-thirds. Further, as a practical matter, it seems to the committee that a fifty-fifty formula would have the best chance of general adoption. It seems a fair basis of compromise between states which would gain by weighting the property factor and other states which would gain by weighting the business factor. Further, the committee believes that a sound, logical argument for giving the two factors equal weight may be found in the following facts: A taxpayer, without going into business or incurring the risks thereof, can secure five to six per cent on his capital by investing the same in bonds or preferred securities. If he goes into

active business an additional return is of course expected, and from information collected by the United States Treasury Department it would appear to the committee a fair assumption that the average successful business earns from ten to twelve per cent on the investment. In other words, property alone will yield five to six per cent; property plus business, ten to twelve per cent; therefore, on the average, each factor is responsible for half the income. In order to give the two factors of property and business equal weight, the committee suggests that the percentage of property in the state and of business in the state be separately determined and the two percentages averaged and this average applied to the net business income. The effect, of course, is the same as if the income were divided into halves and one-half apportioned by each factor. This is simply a difference in form of statement and the committee's recommendation is made with a view of avoiding unnecessary changes in form in a majority of states where the idea of dividing the income would be a novel one.

7. Measurement of Property Factor: Tangible Property Only to be Considered

The committee recommends that the per cent of property within and without the state be determined by consideration of only the tangible property, real and personal, intangible property being eliminated from the formula. There are several reasons justifying this elimination: first, the practical difficulty of assigning a geographical situs to intangibles; second, the fact that there is a marked legislative tendency to eliminate intangibles, which tendency it seems necessary to take into account; third, it seems possible to make a fair apportionment without consideration of intangibles. With respect to intangibles of the character of good will, patents and trade marks, in the majority of cases the fairest assumption would be that they attached pro rata to all of the tangible property and places of business of the company. If this is so, their inclusion in the formula would not change the per cent at all or materially, and it is simpler to leave them out altogether. Investments yielding interest and dividends should be left out of the formula in any event, as these items of income are no part of the trading or net business profit to which the formula should be applied. Interest and dividends can and should be allocated specifically. In passing, it should be noted that some states have taken a half-way course, leaving out of the apportionment formula intangible investments, but including in the income apportioned by the formula the interest and dividends received from such investments. Obviously this is not justified. No income should be apportioned by a formula in which the source of the income is given no weight whatever.

8. Measurement of Business Factor in Formula

In considering the business factor the first question met was whether this should be measured by sales alone or whether some other elements should also be introduced, reflecting the business activities preceding the sale. It seemed to the committee that this question is answered when the answer has been found to a preliminary qustion already considered. If the view is taken that the sale, being the source of all gross income, is therefore the source of all net income, then it would seem to follow that no other element, not even property, should be considered in the formula, and all income should be allocated to the various points of sale. On the other hand, if this theory is discarded, and the committee believes it to be wrong and discredited by the decisions of the United States Supreme Court, then it follows that sales should enter into the formula only as a measure of one business activity, namely, the selling business, and that all preceding activities contributing to the income should be measured in some way and also have representation in the formula. Evidently the same conclusion has been reached by the legislators and tax officials of a number of states which have given the matter consideration within recent years. For example: Wisconsin measures the manufacturing business by manufacturing cost and the selling business by the proceeds of sale less manufacturing cost, and in cases where a special purchasing business or purchasing department is maintained within or without the state a further subdivision is recognized, business, to the amount of the purchases, being assigned to such department and deducted from the manufacturing cost assigned to the place of manufacture. The Massachusetts formula brings in the wage element instead of manufacturing cost, allocating one-third of the income with reference to tangible property, one-third with reference to sales and one-third with reference to wages and salaries. The wage element has also been introduced in the apportionment of business income under the New York personal income tax; and the purchase element has been used in the Virginia formula.

The committee has decided to recommend that the business factor be measured by the sum of the amounts paid out by the taxpayer for labor and material—that is, wages, salaries and purchases —plus the amount of the receipts from the sale of the goods and products dealt in, including incidental receipts. In other words, business activity is measured both by income and outgo. The reasons which led to this decision may be summarized as follows:

(1) In the first place, it seems the most logical method for measuring business activity. What is the business activity which produces the net income? Is it not the efficient turning over of the working capital? And two turnovers are always essential for the production of profit, namely, the investment of the working

capital in the necessary materials, goods and labor, involved in the conduct of a manufacturing or merchandising business, and the conversion of such investment back into money through sales. Efficient purchasing and efficient manufacturing are as necessary for the production of net income as efficient selling. It is recognized, of course, that payments for wages, salaries, goods, materials and supplies do not represent the entire outgo of a manufacturing or mercantile concern, but the great bulk of the expenditures are for these purposes and it seems to the committee that other expenditures may well be omitted, not only because the result would not be greatly changed, but also because it is essential to keep the formula simple.

(2) In the next place, the method of measuring business here proposed, is believed to have a better chance of general adoption than any rule now actually adopted in any state. It seems to afford a fair basis of compromise between Wisconsin, New York and Massachusetts. All of these states have recognized the necessity of measuring the business activities preceding the sale. The formula now recommended incorporates all of the factors of measurement used in any of these states and does it in such a way that it is believed the differences in allocation produced by substituting the committee's formula would on the average make a surprisingly small difference in total revenue. In this connection it is encouraging to note that an effort has already been started in the State of New York for the adoption in substance of the formula now recommended, as a substitute for the apportionment formula now used for the purposes of the corporation income tax. A recommendation to this effect is incorporated in the very comprehensive and well-considered report on the whole field of New York taxation submitted to the New York legislature on March 1st, 1922, by a special joint legislative committee. The conclusions of our committee in tentative form were furnished to the New York legislative committee and formed the basis for its recommendations. This action shows a most commendable spirit and willingness to compromise and makes changes for the sake of uniformity with other states.

(3) The committee's formula is believed to be somewhat more flexible than any formula now in use for the purpose of reflecting partial processes and activities of many varieties which may be conducted in several states.

(4) With regard to the element of purchases, it seems to the committee necessary to introduce this element, if the originating end of the business is to be properly reflected. For example, consider the city milk industry, where the purchasing and collecting are often in one state and the sale and delivery in another; consider, also, the chain-store business, which is a combination of

wholesaling and retailing. It is obvious that the entire profit should not be assigned to the retail branches, as this profit includes the wholesale profit as well as the retail profit. However, very little profit will be assigned to the head office, by consideration of the wage and salary element alone. The wholesaling profit is largely due to the centralized purchasing and may well be measured by crediting the head office with business activity to the amount of the purchases made by it.

9. Allocation of Wages, Purchases and Sales

Assuming that the total business activity is to be measured by the sum of the wages, salaries, purchases and sales, there remain to be considered the difficulties which will be encountered in allocating these activities within and without the state. It may be admitted that difficulties will be met, but most states have already met and dealt with the problem of the allocation of sales, and it does not seem to the committee that the allocation of purchases, wages or salaries is any more difficult; in fact, they may be allocated in very much the same manner as sales.

The general principle back of allocating all of these elements would seem to be that they must be assigned to some regular place of business of the company. A fringe of business activity may extend out to a considerable distance from every place of business. For example: travelers may be sent to other states for the purpose of soliciting orders or making purchases, but for practical purposes no income can be attributed to these outlying points where the customers or parties negotiated with are located. No system of accounting adopted for purposes of the business itself would attempt this. On the contrary, the entire profit would be divided in some way between the various offices and places of business. If this is true for business allocation, it must be even more true for tax allocation. All of the income should be allocated to some place where it is feasible and practicable to tax it; that is, to some place of business of the taxpayer. Any portion of the income allocated to a state where there is no place of business, the only activity being that of travelers, would be practically immune from taxation.

From the draft law attached it will be seen that wage and salary payments are to be assigned to the office at which the employe chiefly works or from which he is sent out. Similarly purchases and sales are assigned to the office at or from which they are chiefly negotiated and executed. This language may seem very general, but it seems inadvisable to make it more specific. A sale may involve solicitation of the order, acceptance, shipment of goods, carrying an account with the customer on the books, collecting the purchase price and general correspondence with the

customer. It seems to the committee that no one of these elements is sufficient to outweigh all of the others and that the only safe and proper course is to leave it to the tax commission to determine in each individual case which office of the taxpayer chiefly handled the matter, considering everything involved both in its negotiation and execution. While it seems impossible to make a specific rule applying to all cases, it is believed there will be no great difficulty in making the correct allocation in the great majority of individual cases. Similar problems of allocation are presented with respect to wages, salaries and purchases, and it would seem possible to allocate them in a similar manner.

10. What Income Should be Assigned by the Formula—Its Limitations

As already suggested, it is recommended that interest, dividends, rents and royalties be allocated specifically to sources within or without the state. These items form no part of the trading profit in the first place, and therefore do not need to be separated by any formula. It would be highly unjust to add net income of this character to the trading profit and then apportion it by a formula in which the source of such net income has no representation whatever.

The same is true of gains from sale of capital assets or other property distinct from the stock of merchandise sold in the regular course of business. No allocation is needed, as the profit is already separated and can be assigned to its proper source and, obviously, receipts from unusual sales of this character should be eliminated from the sales factor used in dividing the trading profit.

The above exceptions and deductions are recognized in the model law as now drawn and it has simply been restated in the committee's revision of Sections 308 and 309. The only substantial difference is in the allocation of gains from the sale of intangibles which, in the model law, are allocated to the state if the taxpayer is a resident and outside of the state if a non-resident The committee believes that for purposes of a business income tax there should be no distinction between residents and non-residents. If the intangibles from which the profit resulted were outside investments not connected with the business, in neither case should the profit be subjected to a business tax. On the other hand, if the intangibles are of a character connected with the business—for example, the good will of a business plant—the profit of sale should be taxed or not taxed regardless of the residence of the owner, depending on whether the plant is located within or without the state.

The committee is quite clear that the application of the formula herein recommended should be confined strictly to the allocation of

the trading profit of manufacturing and mercantile concerns. The subject matter assigned to the committee did not involve the apportionment of other business income, such as that derived from financial, investment, brokerage, advertising, personal service, real estate, insurance businesses, etc. However, it seems to be within the scope of the committee's work to define the limitations of its own recommendations and it is evident that the formula herein recommended cannot be properly applied except to manufacturing and mercantile concerns, and even with such concerns it should be confined to the portion of that income derived from manufacturing and mercantile business.

In the committee's redraft of Sections 308 and 309 of the business income tax law, it will be noted that a clear distinction is made between mercantile and manufacturing business and all other kinds of business, and that with respect to such other business it is provided that the income shall be specifically allocated under rules and regulations of the tax commission. This provision is inserted tentatively, simply to complete the text and pending such further study as the Model Tax Committee may wish to give it. While the committee has given no intensive study to the question of allocating income of miscellaneous concerns, other than manufacturing and mercantile, it may be proper to say that it feels doubtful whether any statutory formula can be devised applicable to such miscellaneous concerns. Specific allocation in the case of each particular taxpayer or each class of business under rules and regulations of the tax commission may be the only feasible course.

11. Relief Provision where Formula is Inapplicable

Section 310 of the model business income tax law permits the taxpayer to petition for determination of his income on some other basis, where the statutory method of allocation seems to be inapplicable and to work unreasonable results. The change in the statutory formula recommended by this committee does not in any way do away with the necessity of this section, as cases will no doubt arise where any rule will not work fairly and relief will be required. The only new question considered by the committee was whether departure from the statutory formula should be only on application of the taxpayer for relief, or whether the tax commission itself should have power to drop the formula and allocate the taxable income in some other way. There was a difference of opinion among the members of the committee on this point, but the majority are of the opinion that no substantial change should be made in Section 310 which, as now drawn, provides for departure from the statutory rule only on application of the taxpayer. If the tax commission wishes to adopt another method of apportionment which will decrease the tax, no doubt the taxpayer can be prevailed

upon to file an application. On the other hand, if the tax commission can freely depart from the statutory rule for the purpose of increasing the tax, this power would no doubt be exercised in many cases judiciously and cautiously, but in other cases it might not. Inequality between individuals would creep in; differences between state practices develop and uniformity, the prime essential, would be lost. It seems fair to assume that any rule generally adopted will, on the average, give the state all it is entitled to and that the great majority of taxpayers will pay on this basis without question. It, therefore, seems no hardship to the state that departure from the rule shall be made only on the application of the taxpayer for relief in extreme cases.

12. Personal Income Tax and Apportionment

The theory of the model business income tax and model personal income tax is that the business tax shall be a low privilege tax imposed at the place where the income is derived. The main income tax, with progressive rates, is imposed only on the individual and this only at his place of residence. It would seem, therefore, that no apportionment provision is necessary in the model personal income tax law. Non-residents are not subject to this tax at all, and residents are intentionally subjected to a tax on their entire income wherever derived, including income from business outside of the state, which has already been subjected to a business income tax in another state. This committee is in entire accord with the theory and correlation of these two laws, and the following suggestion is made primarily with the idea of encouraging the passage of the two laws.

As the matter now stands, passage of the model law is discouraged, as the citizens of any state which passes the law in advance of other states will be penalized by double taxation. New York, Wisconsin and other states still subscribe by their legislation to the theory that income of a non-resident from trade or business in the state should be subjected to the personal income tax rate. If now, for example, Illinois should adopt the model tax system, its citizens will pay a personal graded income tax in two states with respect to income from business in New York and Wisconsin. This will all be ironed out when the other states adopt the model tax system, but pending that millennium it would seem that some relief from double taxation should be given to the citizens of the state which has adopted the model system. The committee, therefore, suggests an additional section to the model personal income tax, somewhat as follows:

> "If any part of the income taxable under this act is derived from the conduct of trade or business by the taxpayer wholly

or partly outside of the state, and the taxpayer has paid or will be required to pay to any other state or country an income tax on the portion of such income attributable to the business in said other state or country in excess of —— per cent thereof, the amount of such excess tax shall be allowed as a direct credit, in reduction of the taxes which would otherwise be payable hereunder upon the same income. Such credit shall be allowed only on presentation of satisfactory proof that the taxpayer is entitled to the same."

The rate to be filled in in the blank should be the business tax rate, whatever that may be, in the state adopting the above provision.

Carl S. Lamb, *Chairman*,
Pittsburgh Plate Glass Company
H. H. Burbank,
Harvard University
Wm. S. Elliott,
International Harvester Company
R. M. Haig,
Columbia University
Alexander Holmes,
Department of Taxation of Massachusetts
Henry B. Nelson,
Nash Sales Company
Frank D. Strader,
Wisconsin Tax Commission
* J. F. Zoller,
General Electric Company

* Disagrees with recommendation to include purchases in apportionment formula.

RECOMMENDATIONS OF THE COMMITTEE REFERRED TO IN THE ABOVE REPORT

For Sections 308, 309, 310, 311 of the Model Business Income Tax substitute two sections reading as follows:

Sec. 308. Allocation and Apportionment of Income.

1. Interest, dividends, rents and royalties not received in connection with the transaction of business, and gains from the sale of property not held, owned or used in connection with business (less related expenses, if any) shall be deducted from the taxpayer's total net income and only the balance, hereinafter referred to as business income, shall be taxable hereunder.

2. If the trade or business of the taxpayer is carried on entirely

within the state, the tax shall be imposed on the entire business income, but if such trade or business is carried on partly within and partly without the state, the tax shall be imposed only on the portion of the business income reasonably attributable to the trade or business within the state, to be determined as follows:

(a) Interest, dividends, rents and royalties (less related expenses) received in connection with business in the state, shall be allocated to the state and where received in connection with business outside of the state, shall be allocated outside of the state.

(b) Gains from the sale of capital assets or property held, owned or used in connection with the trade or business of the taxpayer but not for sale in the regular course of business shall be allocated to the state if the property sold is real or tangible personal property situated in the state or intangible property connected with the business in the state; otherwise, such gains shall be allocated outside of the state.

(c) Net income of the above classes having been separately allocated and deducted as above provided, the remainder of the net business income of the taxpayer shall be allocated and apportioned as follows:

(1) Where income is derived from business other than the manufacture and sale of tangible personal property, such income shall be specifically allocated or equitably apportioned within and without the state under rules and regulations of the Tax Commission.

(2) Where income is derived from the manufacture or sale of tangible personal property, the portion thereof attributable to business within the state shall be taken to be such percentage of the total of such income as the tangible property and business within the state bear to the total tangible property and total business, the percentages of tangible property and of business being separately determined as hereinafter provided and the two percentages averaged.

For purposes of the foregoing computation, the value of the tangible property shall be taken to be the average value of the tangible property held and owned by the taxpayer in connection with such business during the year for which the income is returned, excluding any property the income of which is not taxable or separately allocated under the foregoing provisions of this Act.

The business of the taxpayer shall be measured by the amount which the taxpayer has paid out during the year for which the income is returned for wages, salaries or other compensation to employes and for the purchase of

goods, materials and supplies consumed or sold in the regular course of business, plus the amount of all receipts during the year from sales and other sources connected with said business, excluding, however, receipts from the sale of capital assets and property not sold in the regular course of business and also receipts from interest, dividends, rents and royalties separately allocated as above provided.

Accounts payable for compensation and purchases and accounts receivable from sales and other sources arising from business during the year, shall be included in the formula if the taxpayer's return is made on the accrued basis.

For the purpose of this subdivision, payments for wages, salaries and other compensation shall be assigned to the office, agency or place of business of the taxpayer at which the employe chiefly works or from which he is sent out or with which he is chiefly connected.

Payments for purchases shall be assigned to the office, agency or place of business of the taxpayer at or from which such purchases are chiefly handled and attended to with respect to the negotiation and execution.

Receipts from sales and other sources shall be assigned to the office, agency or place of business of the taxpayer at or from which the transactions giving rise to such receipts are chiefly handled and attended to with respect to the negotiation and execution.

For the purposes of this section, the word "sale" shall include exchange and the word "manufacture" shall include the extraction and recovery of natural resources and all processes of fabricating and curing.

Sec. 309. Allocation in Special Cases.

If any taxpayer believes that the method of allocation and apportionment hereinbefore prescribed as administered by the Tax Commission and applied to his business has operated or will so operate as to subject him to taxation on a greater portion of his net income than is reasonably attributable to business or sources within the state, he shall be entitled to file with the Commission a statement of his objections and of such alternative method of allocation and apportionment as he believes to be proper under the circumstances with such detail and proof and within such time as the Commission may reasonably prescribe; and if the Commission shall conclude that the method of allocation and apportionment theretofore employed is in fact inapplicable and inequitable, it shall redetermine the taxable income by such other method of allocation

and apportionment as seems best calculated to assign to the state for taxation the portion of the income reasonably attributable to business and sources within the state, not exceeding, however, the amount which would be arrived at by application of the statutory rules for apportionment.

CHAIRMAN WHITNEY: Gentlemen, I know that this conference and the association appreciate very much this finished report which has been submitted by Mr. Lamb and the other members of the committee.

At the request of Professor Bullock, I desire to announce that immediately after the close of this meeting, the committee on nominations, made up of Messrs. Bullock, Haugen, Link, Query and myself, will meet in this room.

We have today another paper which will be of particular interest to all those in attendance at the conference. It is now three o'clock, and I propose, unless the conference wills otherwise, to give half an hour for the discussion of this report of the committee, to be followed by a paper on the subject of United States capital stock taxes, and discussion of that, and then, if we have time, a discussion of either or both of them. If there is no objection we will proceed with the discussion of this paper. Each speaker will be limited to five minutes and no one can speak a second time without unanimous consent, if there is any one who desires to speak who has not spoken before. I don't know what members of the committee are here. I see that Professor Haig is here, and some others, and it may be that they can give us some added light on the committee's report. Is Professor Burbank of Harvard here?

(No response)

CHAIRMAN WHITNEY: Professor Haig, do you care to say a few words to us on this subject? I know you have been through it. You may assist in the discussion of it. We should like to hear from you.

PROFESSOR R. M. HAIG, of Columbia University: I had not intended to speak and have nothing, I think, which justifies taking your time. I do subscribe very heartily to the plan presented in this report. I think it represents the soundest scheme for solving this very tangled problem that has yet been presented. It seems to me to approach very closely to the theoretical ideal of fair distribution, and it has also the very important and practical merit of offering a plan which holds a good deal of promise for adoption in the various states.

The plan, I might say, has been tried out to considerable extent on a statistical basis, and it is rather surprising to see that there are such small deviations from some of the plans which are already

in force in the states which have made a real attempt to solve the problem. It can be adopted by states like Massachusetts, New York and Wisconsin without involving a very substantial sacrifice from their present arrangement. I think those of us who are interested in seeing a business income tax established which is fair to the taxpayer who is unfortunate enough to have a business which extends into different states, will have an opportunity to support a plan which will offer a chance of fair taxation.

CAPTAIN WHITE: As a question for information, my understanding is that an attempt is now to be made by the different states to allocate an income tax on the income of business on this device, that if there be an agency, for instance, in New York City, selling material, that part of the income derived from the use of that material in Massachusetts would be allocated to the state of New York. Am I correct?

MR. LAMB: There is the manufacturing profit and the selling profit—part of the profits would be allocated to New York, yes, sir.

CAPTAIN WHITE: Now, the person in New York selling this material sells it to a customer in Wisconsin. Does any of the profit of that sale go to the State of Wisconsin?

MR. LAMB: Not if the seller has no place of business in Wisconsin.

CAPTAIN WHITE: Only in case they have a place of business in Wisconsin.

MR. LAMB: And the sale is made through the agency in Wisconsin.

CAPTAIN WHITE: Yes. Now, how are you going to take care of the condition where the agent does not conduct the sale, but simply gets a commission? Is he taxed then on his commissions in the State of New York or is the parent company still taxable on the sales made in New York.

MR. LAMB: If he is a commission merchant, simply acting as selling agent, then I should say the business of the company, if done through an agent in New York, would be regarded as New York business, in so far as the sale was concerned.

CAPTAIN WHITE: It would be, so far as the sale was concerned.

MR. LAMB: Yes, that sale would become a part of the formula in accordance with the recommendations of the committee.

CAPTAIN WHITE: Of course, the objection I see in regard to that allocation is this: It will eventually result in the displacement of business organized for selling purposes in New York City, which will devolve upon traveling agents. If the parent company has a

desire to establish an office in New York City, it will have to be prepared to subject its sale made in that office to New York City, although the sales from that office may not necessarily make a profit. They may conduct the business, for instance, in foreign countries. I feel that the effect of this law will be to drive the business of the manufacturer, for instance, the merchandising of his product in New York City, back to where it is manufactured, and New York City, where so many of the manufacturing interests of the United States go, instead of getting an income derived from this kind of business will lose the business it now has.

Mr. S. S. Kalisher of Pennsylvania: I wish to speak on this subject just a moment, from my experience. I have not had a chance to read the recommendations. There are, of course, manufacturers in this country who produce, transport, manufacture and sell their products, all within the same organization; they make no purchases of raw material. It would seem to me that a discrimination would result from the scheme of the committee unless some provision is made to take care of purchases. In a business organization such as I mention, all of the interdepartmental profits are wiped out in the last analysis and the final result is you have one turn-over—possibly one and one-quarter—which is very small, and it is small only because of the elimination of the interdepartmental transactions of producing, manufacturing, transporting and selling. In my experience also I find that the cream of the products, so to speak, is sold, in certain states, whereas the by-products are sold where the goods are manufactured. There again is a discrimination with respect to the value of your product. I have no scheme to offer except perhaps that if the value of the product, the finished product, the cream, so to speak, sold in certain states, can be reduced in some way to the average value of the product of the company as a whole, it will relieve some harmful discrimination. I don't know what to suggest in lieu of purchases with respect to production, unless some scheme could be evolved which would permit of a value of products produced above wages and salaries, of course in line with what the market would bring for that product if purchased. I don't know whether I make myself clear or not. Those two things bother particularly such large corporations and companies as are engaged in all the phases of producing, transporting, manufacturing and selling the product. The saving clause, of which you speak, is of course very essential, and we have found in certain states that the tax commissioners seem to be as fair as they reasonably can be.

Mr. R. H. Miner of Ohio: Just one point that occurs to me there, that this scheme may possibly not take care of situations where there is a manufacturing loss, or possibly a small profit, the

loss more than offsetting the profit and nothing being left to tax. I was wondering whether all the tax commissions in all the states would be satisfied under an arrangement like that.

Mr. Ryder of New York: The suggestion for an additional section providing for a credit in case of taxes levied by another state, is an excellent suggestion to facilitate the acceptability of a business income tax somewhat, in a state where it is being agitated, but in New York we have a theory that it is also advisable to encourage other states to do the same thing, and in our income tax law we provide for a credit for taxes paid to other states in case the other state reciprocates. I think the committee might well consider an addition to this section of a provision that it shall apply only in case other states reciprocate.

Chairman Whitney: Any further discussion, gentlemen, on this able report?

Mr. Charles J. Tobin of New York: I should like to make an inquiry. Take these big grocery concerns which have their own separate and distinct retail stores, and have also separate corporations which do their buying and are simply in the nature of holding companies. I should like to know just how the committee handles that particular situation, of a company which is entirely a holding company.

Chairman Whitney: A distinct entity?

Mr. Tobin: Yes, sir, and yet receiving whatever profits there may be from the operation of those different companies.

Chairman Whitney: Has that phase, Mr. Lamb, been covered or discussed?

Mr. Lamb: That phase of the subject was discussed and we feel that the form of our recommendations cover the holding company, in case a holding company is actually transacting business as defined under this law. If it is merely receiving dividends, I don't think there would be any tax, and I don't think there should be any tax, if you are administering a business tax; but this draft, I think, reaches out to the holding company that may be in part a holding company and in part engaged in business.

Mr. Tobin: If I may interrupt, I was referring especially to paragraph (a) of section 308–2, and also to subdivision 1 of paragraph (c), as to whether such a company would fall in that classification. Is that where you would bring it in?

Mr. Lamb: The question of holding companies, we thought, would be covered in the event that the holding company were actually engaged in mercantile or manufacturing business, but this

being a mercantile and manufacturing tax, and nothing more, it should not reach out to the holding company in the event that it is not so engaged, because your subsidiary companies, which are operated under your holding company, would be subjected to your business tax, and having been taxed once, why should they be taxed again, unless they are directly in business?

MR. TOBIN: I have in mind where such a holding company would be deemed a mercantile and manufacturing corporation and taxed under the laws of New York, that is, it would be classified as such, and not in any other way. They would be paying their taxes under that particular article of the tax law, so you would be forced, because of that classification, to treat them as a mercantile and manufacturing corporation, and you would be called upon to make proper apportionment of taxes.

MR. LAMB: We have not undertaken to meet the peculiar statutes of different states. We are trying to model a clause here that if uniformly adopted would work fairly among the states. It was hardly within the province of the committee to meet the peculiar statutes that may exist in forty-eight different states.

MR. W. S. ELLIOTT of Illinois: May I ask Mr. Tobin, the case you present, whether they are the chain stores, where the head company is one company and the branches are others?

MR. TOBIN: I have that in mind, sir, yes, where they hold themselves out as the parent company, in carrying on the business with these different subsidiaries.

MR. ELLIOTT: Doesn't that do away with the necessity of apportionment? Our rule deals with the case of one company, a general store, conducted by one company, where you have in one trading profit combined the wholesale profit and retail profit, but if you have separate corporations you don't come under this rule at all.

MR. TOBIN: That would be true, sir, but they hold themselves out as a mercantile and manufacturing corporation and get away from the provisions of the statute which exempts holding companies from that particular article of the tax law, and it is in a great measure a subterfuge to beat the statute.

MR. ELLIOTT: I don't see why, under that organization, your head company would not show on its books the profit of the centralized wholesaling business in purchasing, and the local branches the retailing profit, which is exactly what we want. Now, if they are in a situation by which they don't show that, then they come under this remedial provision under the model law.

CAPTAIN WHITE: There is another question involved here that has not been clearly brought out, and that is the allocation of profits

due to the factories that exist in different states. For instance, take Norton of Worcester, Massachusetts, which does a very large manufacturing business, part of which—the finishing business—is conducted in Massachusetts; other parts are conducted in Pennsylvania and New York. Now, if New York adopts a law in regard to the allocation of profits and Pennsylvania does not, New York is going to profit by the benefit that has been received from that company doing its manufacturing operations in Pennsylvania. If you can arrange for distribution according to the manufacturing activities, you can probably do something that the managers of the corporations will be thankful to you for, because they find it somewhat difficult.

Chairman Whitney: Is Dr. Adams in the room? We should like to hear from him if he is here. Dr. Adams, we are discussing the report of the committee on apportionment between taxes on interstate mercantile and manufacturing companies. Some one has suggested that you are thoroughly familiar with this topic, and we should like to hear from you. Of course you were not here when the report was read, but I believe you are familiar with it, and in addition to that you are serving on a committee of the United States Chamber of Commerce, that has the same subject in hand, and we should like to have the benefit of your experience and advice.

Dr. Thomas S. Adams: Mr. Chairman and gentlemen: It is a great imposition on the audience, and somewhat of a problem to myself to talk helpfully on this subject which I have not heard discussed.

I have in the past given a great deal of thought to this problem, and for just about three minutes I might mention some of the larger aspects as they exhibit themselves to me. I want to emphasize, first of all, the obvious point which Mr. Holcomb made this morning, that it is much more important to get some rule than to get any particular rule. For many years in this association, when I was fortunate enough to be able to attend regularly, I tried to get the association to bring pressure to bear upon the state tax commissions, upon the legislatures of this country, and particularly upon the interstate commerce commission and the federal trade commission, to get under way some movement that would popularize a rule. I still think the association made a great mistake that it did not get behind those things actively at that time. I recall going to the commissioner of corporations, before the federal trade bureau was established, at a time when the commissioner of corporations — not the federal trade commission — was giving very considerable attention to taxation, and I remember going to the interstate commerce commission, on my own initiative, and

saying something like this to those gentlemen—I think it was true then and I think it is true today—that the time was arriving, and was here in fact, when the business interests of this country and the public utilities of this country were going to be very unjustly treated, because of the absence of a uniform method of allocating income and properties to the various state jurisdictions. Now, I said: "This is more or less of a new problem to the states; if we can get your backing, have a scientific and careful study, and have one rule, the chances are that most of the jurisdictions in the country will accept it. Now, won't you give enough time and study to these two subjects to suggest some rule?" I nearly had the trade commission on the hook at one time, but the interstate commerce commission never even nibbled at it.

Now then I think there is a lot in what I am saying. As a rule, I don't believe that this association should take part in any very active propaganda, but here is a legitimate exception to that rule. Everybody knows that we and our successors for one hundred years are not going to settle this problem of allocating with scientific accuracy. I doubt if it has an absolutely correct answer. I have given this subject a great deal of thought and I don't believe there is any one-hundred-per-cent correct answer. Any uniform rule is better than the existing situation. Now, let us get a rule, and then all get behind it and try to get that one rule adopted.

The second thing I want to state is derived from my own experience, and it is this: I don't believe that the one rule is going to consist in the application of the Massachusetts formula. This is the point I want to make—I may not be stating it well—Massachusetts has a method by which, as you know, income is divided into three parts. One is distributed in accordance with tangible property, another in accordance with sales, and the other in accordance with payroll. There is a lot of sense behind it, but it has to my mind one essential defect. I don't believe you ought to divide your income in three separate departments, because in many instances the elements in accordance with which you apportion sales, property or payroll are sometimes so unimportant that they are not fitted to control one-third of the distribution. In other words, you are going to have a company that has no property, sometimes, and if it has no property it is a sin and a shame to assume a one-third control in accordance with this element of which it has none. That one thing is, it seems to me, desirable to avoid.

And then the third requisite of this allocation process is that it should be suggested by a committee in touch with various sections of the country, with their necessarily differing interests, so that the formula shall be in its result something in the nature of a compromise.

I finish what I have to say on this subject with the earnest hope

that this body and association will urge the committee to drive forward this investigation; that we will get a formula, and then for once in our lives, for the avoidance of multiple taxation we will begin a campaign for the adoption of that formula. I think there is almost a solemn duty incumbent upon every man in the organization, unless he can see some special fundamental objection, to urge the adoption of that rule in his own particular state, because it is to my mind a sin and a shame that under the various public utility taxes, methods of dividing the income or the properties are productive of such differing results and applications that if all states in the Union used it, you would find allocated to the various states in the country four or five times as much income as the corporation had or three or four times as much property.

CHAIRMAN WHITNEY: We are very much indebted to you, Dr. Adams.

MR. OSCAR LESER of Maryland: May I ask Dr. Adams a question? Dr. Adams, don't you think it would be in the power of the federal government to enact legislation that would help out?

DR. ADAMS: I don't know about the power, but I feel that when this question is in its making, when the adoption of apportionment processes are just taking place, if the trade commission, with respect to ordinary commercial corporations, and the interstate commerce commission, with respect to public utilities, would, after careful study, come out with a formula, four states out of five would accept it. So far as the federal government is concerned, moral leadership is required, and I think moral leadership and the careful sifting of the facts would have secured for us virtual uniformity and practice in the country if they had done that ten years ago.

CHAIRMAN WHITNEY: Gentlemen, it is now 3:30, and that was the hour when I announced that we would take up the next topic on the program for this session. For the first time this conference has upon its program the matter of the valuation of capital stock for assessment purposes under the federal act. Mr. Fred T. Field of Massachusetts was to be here, but on account of the critical illness of his father it was impossible for him to come. We have, however, fortunately secured the co-operation of the United States Treasury Department in permitting Mr. Charles A. Drake, chief of the capital stock tax division, to be with us today, and he will address us on the subject of the capital stock tax—Mr. Drake.

MR. CHARLES A. DRAKE, of the United States Treasury Department.

THE FEDERAL CAPITAL STOCK TAX

CHARLES A. DRAKE
Chief, Capital Stock Tax Division, Internal Revenue Bureau

I have been asked to outline in a general way the policies of the bureau of internal revenue in the administration of the federal capital stock tax law. I appreciate this opportunity and my remarks will be generalized and confined to the federal capital stock tax, as, due to distinctions in the provisions of the different state laws, the problems are not necessarily the same.

The federal capital stock tax is an excise tax, imposed upon corporations for the privilege of doing business, and in the case of domestic corporations the tax is measured by the fair average value of the capital stock.

The question of doing business requires the most careful analysis and numerous border line cases arise which are difficult to decide. The position of the bureau is now quite definitely established by the latest supreme court decisions, and unless a corporation's activities are limited or reduced to the mere naked ownership or possession of property and the receipt and distribution of income, it will, in all probability, be regarded as doing business and held liable for the tax.

The law itself is not ambiguous, intricate, or hard to interpret if approached in a spirit of fairness. The law does not define "capital stock" or "fair average value" and is silent as to a method for the determination of the latter. Nor does the present law differ materially from the preceding acts, but in recent years there has occurred some change in opinion or interpretation as to what constitutes "capital stock" and the proper method of estimating its fair average value.

Many argue that the capital stock is the share stock, but the bureau contends that there is a difference, at least for the purpose of this tax, between the capital stock of a corporation and the share stock in the hands of the stockholders, and that the market is only one factor in determining fair value.

The decision of the district court for the southern district of New York, in the case of the Central Union Trust Company, sustains the views and policy now in force. The court holds that the significance to be accorded the words "capital stock" depends upon the character of the statute levying the tax, and that the words employed by Congress indicate an appraisal of the value of the capital stock, by considering various factors of value, by the exercise of judgment rather than by an auditor's exact determination of the value of the net worth of the tangible assets taken from the corporation books of account.

Capital stock, therefore, may be said to represent the entire busi-

ness of a corporation; that is, the one hundred per cent ownership; the beneficial ownership of everything that enters into the property of the corporation, including capital stock, surplus, undivided profits, tangible property, good-will and other intangibles; its capacities and prospects; in short, every element that gives it an important present or prospective value.

It is interesting and instructive to note the different viewpoints brought out in correspondence and discussed in the many interviews with taxpayers and their representatives. In one case it will be claimed that the capital and surplus is the only index of fair value, for the law requires that the surplus and undivided profits be included; another, that the market affords the proper basis, since it indicates due consideration of all factors and is the opinion of numerous investors as to the intrinsic worth; and a third, that the earnings should be the only guide, as this is the determining factor in arriving at the worth of an enterprise, and is the controlling factor in a purchase or sale.

If the taxpayer will be as fair as the government is in endeavoring to reach conclusions in accordance with the facts, little difficulty should be experienced in arriving at a satisfactory basis.

The impossibility of establishing fixed rules or methods for the determination of fair value, embracing every possible line of business, is apparent and usually recognized. Any single scheme or formula will necessarily have its shortcomings, if applied to all corporations. No fixed basis or method is applicable to all companies and even the same method may not apply year after year. The problem must be approached from all angles in a spirit of fairness. It is important, therefore, to secure as auditors a different type than is implied in the ordinary sense of the word; that is, men of sound judgment and of a judicial temperament; of an analytical turn of mind, having a general knowledge of business conditions, some knowledge of law, of accounting practice and financing procedure.

The three exhibits of the form upon which the return is made are considered a means of supplying uniform information by all corporations, and such data constitute supporting evidence for use by the bureau in checking the fair value reported. Corporations are invited to attach additional exhibits or statements of pertinent facts relied upon to support the valuation claimed.

Exhibit A—the balance sheet—values over or understated on the books may be adjusted in the "fair value" column to fair market value, if accompanied by a satisfactory and acceptable explanation that clearly sets forth the justification therefor. The nature of the business and character of the assets are the most important factors in determining the reliability of the value reflected by this exhibit.

The balance sheet, subject to any necessary adjustment, affords a sound starting point. Many asset items need no adjustment; some may readily be adjusted on the basis of market value; others are more or less dependent upon earnings. Intangibles, such as goodwill, often constitute valuable assets, which may be determined by saleability or any excess of earnings over and above a fair return upon the investment. If the market value of an asset can be established, as in the case of an apartment house or timber land, it makes little difference as to the earnings. The earnings may or may not reflect the value of the entire assets. All holdings of a company must be considered and it should be noted whether any non-productive or non-income-producing property or securities are included. The earnings may only reflect the value of that portion of the assets used in the business. Assets depreciated in conformity with income tax requirements, often have a fair value considerably in excess of depreciated value. Public utilities, manufacturing and similar companies may have large investments in Liberty bonds or low-dividend-paying, high-class securities that do not require as high a rate of capitalization as would be necessary in establishing a plant value. Failure of such companies to earn a fair return on the investment indicates an excessive capitalization, something questionable in the management, excessive salaries, disproportionate expenses, or some unusual condition affecting the company. Under these conditions, it is difficult and often impossible to adjust the balance sheet to fair value except arbitrarily or through earnings; while in the case of a new business the earning capacity has not been established and therefore has little bearing.

Cost is not always the same as value, but is evidence of value. Value involves not only a concept of the present, but also of the future. Liquidating value is generally considered a minimum fair value.

Exhibit B—the market: To this exhibit the earlier regulations attached the greatest importance. It is now regarded as having a bearing, but only of importance where the underlying factors upon which the market has been established are sound in all essential particulars. Different classes of stocks sell on considerably different bases, as regards assets, stability of earnings, and investment yield. Thus there is a large variation between stocks in public utility, mining, motor, steel, shipping, and textile companies. Manipulation plays an important part in many instances. Control rarely changes at listed prices, and this factor should not be overlooked in using the market price as indicative of fair value of the entire capital stock. The value of many stocks depends to a large degree upon the control over other concerns which the ownership of the stock gives; as, for example, minor railroads with important connections, and the like. The advantages resulting from this

control are often not reflected in the investment yield or stability of earnings of such companies. One element in the market price of any security is its marketability. Comparison of listed stocks shows that a stock with a wide and active market will often command a better price than a stock without such market. The size and general reputation of a company has much to do with the value of its securities.

Par value of the capital stock of a corporation is a rather arbitrary matter. It is notorious that in many large corporations, and also in many smaller ones, a large percentage of the common stock is water.

An actual *bona fide* sale of from fifty-one to one hundred per cent of the entire capital stock of a corporation may hardly be disregarded, but an active market may only reflect a large turn-over of a small number of shares, representing the floating supply. To justify a refusal to accept the market there is generally an explanation, such as manipulation, large earnings with an utlra-conservative dividend policy, prospects favorable or unfavorable, or unusual conditions. In many instances the market affords the only reliable basis, as in the case of a promotion company, with an active market and assets of highly speculative value, or where a sale price is established by an underwriter. Where manipulation is evident the market is unreliable.

Exhibit C—the net income: This is a theoretical determination of a valuation, and the application of any theory requires the exercise of great care. The weight attaching to this exhibit is also largely dependent upon the nature of the business and the character of the assets.

Two important factors are involved in a proper consideration and interpretation of exhibit C; first, the proper earnings to be capitalized, and second, the rate to be used in capitalizing. It is as difficult to determine the true earning capacity as it is to decide the rate of return.

Average past earnings under normal conditions simply indicate what may ordinarily be expected in the future. It would be unfair and illogical to use for the purpose of capitalization and as the controlling factor in determining fair value, earnings abnormally high or low in the case of corporations advantageously or adversely affected, while the country was engaged in war. The bureau has given this condition careful consideration and in every instance has endeavored to permit adjustments that appeared warranted. It seems reasonable to assume, however, that the value of the capital stock fluctuates with the conditions in the business, and the tendency is for increased value during prosperous years and *vice versa*.

Also, in capitalizing past earnings, there should be regard for

the prospects of the business. Extreme illustrations of this would be breweries legislated out of business; oil, mining, or timber properties nearing exhaustion; or the securing of a large contract or order on very favorable terms.

In recent years the writing down of inventories has resulted in losses for a particular year, but such losses do not indicate the true earning power of the company.

If asset values are being depreciated on an inflated or excessive basis, the net income is materially reduced. Where a corporation increases its capital, it is reasonable to suppose that the earnings will increase proportionately, so that past earnings on the lower capital are not controlling in determining the earning capacity of the increased capital. The years to be considered should be comparable with current conditions.

The wide variation in rates used by corporations in their returns, for capitalizing the adjusted average income indicates that in many instances the rates are selected arbitrarily, to establish a valuation comparable with the market or the book value. It does not require as high a rate to support sound asset values as it does to introduce a good-will value.

The chief factors in determining the rate for the purpose of capitalization are certainty of income and risk. The element of risk varies widely between different kinds of business and may even vary in different companies in the same business. Considerations are whether the products are luxuries or relative necessities; whether earnings are regular, indicating stability; increasing, indicating prospective development and prosperity; decreasing, indicating depression or slowing down of business and losses, indicating serious conditions; and greatly fluctuating, indicating unreliability and generally greater hazards. Large increases or decreases should be explained. So, according to the nature and hazards of the business, the amount and nature of the assets, the consideration of a fair interest return, the cost of borrowing money or underwriting securities, the compensation for management, the policy as to dividends, depreciation and upkeep to maintain the original investment unimpaired, and incidentally the bonded indebtedness, the rates should necessarily vary. Many of these factors, according to the system of accounting employed, are eliminated through the operating account.

To apply a given rate in a case of decreasing and increasing earnings having the same average over a five-year period, would establish the same value, with entirely reverse conditions prevailing. The result would be a possible advantage to one company and an injustice to the other, which illustrates the impracticability of contending that any fixed rate for capitalizing may be employed. Therefore, the rate is largely dependent upon the peculiar circum-

stances surrounding each individual company and the economic factors affecting the particular industry.

To arrive at fair value, possibilities and probabilities, as well as things certain, are properly considered, but it is apparent from the foregoing that in the case of most corporations, under normal conditions there is a point at which the information called for by the bureau is harmonized into what may reasonably be considered the fair value of the capital stock.

With respect to parent and subsidiary companies, each corporation is treated as a separate entity. However, it is a common contention that a group of corporations is in reality one business and to tax each company within the group is double taxation. After deliberate and careful consideration, the bureau has reached the conclusion that under the provisions of the law as it now stands, each corporation is liable to the tax if it is engaged in business.

In conclusion, it is believed safe to state that under the present regulations, policies, and methods of procedure, the law is being administered with as little annoyance and differences of opinion as can be expected. In support of such statement, reference is made to the small number of protests, appeals for review, and claims received as compared with the total number of returns filed.

I wish to express my thanks and appreciation for the invitation to attend this conference, and both the commissioner of internal revenue, the Honorable David H. Blair, and deputy commissioner, McKenzie Moss, desire to request continued sincere cooperation on the part of the taxpayers and their representatives, and assure you all of the same on the part of the bureau.

CHAIRMAN WHITNEY: Mr. Drake, will you kindly express to the commissioner and the deputy commissioner our great thanks for your being here. We certainly appreciate this co-operation and we shall endeavor to co-operate with you.

MR. DRAKE: I shall be very glad to do so.

CHAIRMAN WHITNEY: Gentlemen, this discussion is not confined to the federal capital stock tax, but we have a good many troubles in the administration of the state capital stock taxes. The matter is before you for discussion, both phases of it.

MR. E. E. WAKEFIELD of Massachusetts: I should like to ask Mr. Drake a question with reference to the use of Exhibit A on net assets, in the valuation, whether in fact a great majority of the valuations are not made in practice on the basis of the net assets and, if so, whether that is a practical administrative matter, or whether it is the view of the bureau, that value is in the majority of the cases best indicated by the net assets.

MR. DRAKE: I feel, as I stated in my remarks, that the balance

sheet is the proper starting point. It is up to the corporation to take up their individual case. We will consider any evidence or information they wish to attach to the return and try to give it fair consideration and use it as a means for checking the valuation that they report on page one. I might say, with the smaller corporations the tendency is to sound values. There is no tendency to show good-will on the books or to inflate or appreciate the assets for the purpose of increasing the surplus, and generally with the smaller corporations the balance sheet is more nearly, I might say, indicative of the fair value. I should be very glad to explain any questions which you desire to ask.

Dr. Thomas S. Adams: About how many corporations do you have to value each year?

Mr. Drake: 340,000.

Mr. K. K. Kennan of Wisconsin: I didn't quite get from the paper in what proportion of the returns the balance sheet makes any reference to good will. I have been in this business for many years and have made hundreds of examinations, and I haven't known any in which the good will was mentioned. I have observed this: In the great majority of returns the determination rested on the balance sheet. I was surprised at the large proportion in which that occurred. I have in mind a corporation which I had to do with very recently. They had been in business for seventy-five years, and the good will was an extremely valuable asset. I had occasion to value the capital stock of that concern, and found no reference to good will. They were about to sell, and in the selling operation it was valued by impartial accountants at fifty thousand dollars. That did not appear at all. I should like to inquire whether that should appear.

Mr. Drake: I should say that if good will is supported by earnings or if it has a salable value it should be considered as an asset in connection with the balance sheet and be included in the fair value of the capital stock.

Mr. Thomas E. Lyons of Wisconsin: Suppose a return is made, as he stated, without mentioning that: does the department then independently inquire or call for additional information?

Mr. Drake: The earnings are generally the best index of the value of good will and it is customary for the office to estimate such value in arriving at the fair value of the capital stock. Where additional information is desired it is requested. If the valuation on the books appears excessive the taxpayer is afforded opportunity to make an explanation. It is a dangerous policy, I might say, to increase or decrease the value of any item without supporting evidence. To illustrate: We had one case where a par-

ticular item "other assets listed at $1.00" appeared in the balance sheet. Upon inquiry as to what it covered the reply was that it represented the capital stock of a million-dollar corporation. So it is a dangerous policy to suggest increases or decreases without having definite statements as to what the situation is, and when questionable items are noted, the bureau endeavors to secure an analysis thereof.

Mr. Lyons: Supposing they undervalued as they did in this case: what steps are taken by the department to reach a result in that situation?

Mr. Drake: As stated before, the taxpayer is requested to explain items of questionable value. In the case referred to, failure on the part of the taxpayer to include good will in the valuation reported, whether on the books or not, would result in understating the fair value.

Mr. S. S. Kalisher of Pennsylvania: May I ask a question? You must of necessity have reports from many corporations, not necessarily large, which have shown a consistent loss for several years, whose stock is not on the market and whose balance sheets show a deficit. Does the department ask a tax under such conditions, and, if so, how can it be computed?

Mr. Drake: The tax is payable by every corporation engaged in business, whether operating at a profit or loss, at the rate of $1.00 of each $1,000 of fair value in excess of the $5,000 exemption allowed by law. A liquidating value is considered a minimum fair value under any circumstances, and it is generally reasonable to suppose that if the corporation is going to liquidate or sell out, they would have some means of establishing a sale value. We try in every way to get full particulars and arrive at some equitable basis in such cases. I may say that we are more liberal with corporations showing losses year after year, in the adjustment of the values of the assets, than with corporations showing large earnings.

Mr. Kalisher: My point is, though, that there is no value; a bond issue may eat it all up, and the bond owners are waiting, hoping that there may be value.

Mr. Drake: You cannot tax a corporation if the value of the capital stock is not $1,000 in excess of the exemption.

Mr. Kalisher: That is just my question.

Mr. W. R. Bradley of South Carolina: I should like to ask one question. What is the difference in arriving at the capital for the purpose of excess profits tax and the capital as shown on Exhibit A on the capital stock return.

MR. DRAKE: As I understand it, there is no relation between fair value and invested capital. I believe the rules and regulations covering the income tax clearly define invested capital. Fair value is entirely different. It might in some instances be the same, but not necessarily.

MR. H. B. FERNALD of New York: I should like to ask Mr. Drake: Isn't this about the situation that we are confronted with regarding these different exhibits, that for the last couple of years or so, corporations earnings have been very much reduced, deficits have accumulated and so forth; market values have been depressed; so that for the last few years we have had a condition where in very many cases—in the typical case you might say—the value of the assets was in excess of any capitalized value, and often far in excess of market quotations? That situation is entirely different from what you have existing in 1917 and 1918, when earnings were large and valuations were high, that is, the selling price of the stock on the market; and hasn't there in fact been a decided swinging over in the assessment of capital stock, so that now we have the valuation of the capital stock on the basis of assets as the dominant feature, whereas in 1917 and 1918 we had a valuation on the basis of capitalized earnings, or on the basis of the market value of the stock? And if we run into times of large prosperity, may we not very likely find that we switch over, and that the valuations are fixed on Exhibits B and C rather than on Exhibit A?

MR. DRAKE: I believe the representatives of the corporations and the corporations themselves are becoming so familiar with taxation matters now, that they are looking after the interests of their own companies, and apparently the attorneys, accountants and others representing the companies, looking after their clients, have not been overlooking very many opportunities in getting their taxes on a basis as near as possible to what the law requires. Our records show less than seven thousand claims a year for the last two years, which we consider a very small percentage as compared to the total number of returns filed. That includes duplicate assessments, penalties, collectors' claims, abatements and refunds, which we are handling at the rate of about five hundred or six hundred a month. In other words, we are handling about as many as come in, and it seems to me to indicate that the policies and methods now in effect are, generally speaking, meeting with approval throughout the country. For the first two years, the administration of the capital stock tax, under the Act of 1916, and under the then existing regulations, was probably more arbitrary than it is under present regulations, policies and methods of procedure.

SECRETARY HOLCOMB: May I ask you a question: I don't know

if there is any impropriety in asking this question; if there is you need not answer it; what has been your experience about the turn-over of your force? Have you any statistics on that? How does it compare with the turn-over in the income tax bureau.

MR. DRAKE: Employees?

SECRETARY HOLCOMB: Yes.

MR. DRAKE: I was placed in charge of the capital stock tax division in 1918, and at that time the Act of 1918 had not been passed. It was passed in February, 1919, and made retroactive, reducing the exemption from $99,000 to $5,000, and increasing the rate from fifty cents to one dollar. We had a small force, and the tendency was to employ lawyers in appointment of auditors, but I took the position that we should have accountants and business men as auditors, for questions of law could be referred to the legal division, and we transferred practically all of the old force to other positions and started with an entirely new force. I had a seventy per cent turn-over the first year, for the reason that I did not let my sympathy influence my judgment, and drew all the employees from the civil service roll, which gave them a probationary period of six months. By doing it that way, instead of taking transfers from other departments, I was able to say to a man that he could either resign or I should recommend that he be dropped, and he generally resigned to keep his record clear, taking a chance on getting another appointment. The largest force employed at any time was one hundred and forty-eight, including auditors, file clerks, stenographers and typists, but by persistent efforts and with a small turn-over the last two years, and with experienced auditors, we have been able to reduce our force to one hundred and twenty-eight, and our work is as near current as you can get this class of work In other words, the force is balanced to handle the work within the year. Returns filed this last July are now starting to come in from the different collectors' offices, and it will take until the middle of December to arrange, index, check and card the three hundred and forty thousand returns. By the middle of January, if we maintain the rate we did last year, we shall have less than five hundred 1922 cases undisposed of.

MR. FERNALD: I think Mr. Drake misunderstood the spirit of my question. I had no intention whatever of making any reflection on the attitude of the department either in the use of the Exhibits A, B and C, or in the way in which they have done their work, because I think they do marvelously well in handling the large number of returns which pass through their hands, but it was rather this question, as to whether we have not been going through just this cycle, where, in 1917 and 1918, with high prices for

stocks, high incomes of corporations, the assessments were based on Exhibits B and C, whereas now, when the incomes have disappeared and the stock market prices are down, we are catching the other basis of valuation under Exhibit A. Haven't we rather been going through something of that kind, Mr. Drake, as a reflection of conditions?

Mr. Drake: I don't think that such a reverse position has been taken by the bureau. It might be that in some cases a tax has been proposed on Exhibit A, where the company was showing losses. The auditors are instructed not to make additional assessments where the fair value of the assets is questionable but in order to bring the question to an issue to propose a tax, allowing time for the corporation to submit additional information. If the corporation, for instance, has shown losses and reported a valuation considerably under that of the year before, and considerably lower than Exhibit A, it would not be in accordance with the practice of the office to assess a tax under Exhibit A without affording the taxpayer every opportunity to make proper adjustments through the fair value column.

Mr. Fernald: Won't we automatically have this, that in time of prosperity we shall tend to get the capitalized income value; in times of dullness we shall get the face asset value, if you want to put it that way. In other words, we shall never get valuations less than the actual value of the assets of the corporation—that would be the minimum—whereas if the income capitalized would exceed that, we should be very likely to get the excess value, to allow for intangibles, as you call it, but Exhibit A would be the minimum with the possibility of B and C bringing that up to higher figures.

Mr. Drake: You have the opportunity of adjusting Exhibit A items to market value in the fair value column; and if advantage is not taken of it, the bureau can hardly be expected to do what the taxpayer fails to do. However, we will consider any adjustments and explanations made, and try to be just as fair as possible.

Mr. Fernald: I know you are perfectly fair; I know that from experience, but your basis where you take your assets — and the companies have today undoubtedly assets of great value, no question about that—but today when their incomes have been dropping off, and the market value of securities dropping down, all of us get the assessment based on the value of our assets but we don't hold to that, and if we come to the time when capitalized income indicates a larger value, then we strike from A over to B and C. In other words, A is the minimum, and assuming A is adjusted on the bottom—whatever value is shown by A is minimum value, with the possibility that B and C may increase that, but if B and C show

values less than that, then A is taken. Don't we just work under that proposition?

MR. DRAKE: Well, many argue that that is the basis.

MR. WALTER W. LAW, JR., of New York: I wonder if Mr. Drake would care to give us any idea as to what actual ratios he uses under different circumstances in capitalizing income.

MR. DRAKE: We have established by statistics for all classes of corporations from listed stocks and also from returns of unlisted corporations, what we call discretionary rates, that is, with a range say from ten to fifteen per cent for a particular class.

The nature of the business, the nature of the assets and the regularity or irregularity of the earnings, together with other factors as mentioned in the paper, are of importance in determining the rate, but what I have tried to bring out in my remarks is that it doesn't require as high a rate to maintain sound asset value as it does to establish good-will or a value for intangibles. Another thing, a rate is a question of pyramiding. How far can you pyramid by capitalizing earnings? With a bank the first six per cent return unquestionably indicates one hundred per cent or par value. Possibly eighteen per cent would indicate three times par, but I don't think you can go indefinitely on and for every six per cent say there is one hundred dollars of par value added; there are so many factors and conditions that must be individualized in the case of each corporation that it would be dangerous, from our viewpoint, to give out fixed rates, because in many cases they would not apply, and in many cases the taxpayer would come back and say: "Here are your rates, why don't you use them?"

CAPTAIN W. P. WHITE: I have a little story about Massachusetts, in comparison with the federal method. I have held that my income tax rate for the corporation should represent a fair value of the machinery and material that is in the corporation; not the market value, but the fair value, because you cannot tell what the market value is going to be until we sell it. The fair value will give me a taxable value, and that is the essential thing. I have got to make money enough to pay taxes. If I make my fair value too low, I may escape somewhere, but then the income tax fellow will come along and snap me in for making too low a return. I feel that there can be a fair basis for the tax which the government charges at the beginning, for the license to do business, and that is the fair value of the capital invested—not the market value of the stock but the fair value of the capital invested. That is represented by various things; part of it may be good-will. Now, having established that and paid taxes on it this year, that should be a gauge as to the taxes that we should pay next year on our

income. The capital that is invested in business ought at least to pay four per cent, without any tax on income. After it has paid four per cent on the capital stated in its request to do business, if it shows an increase over that rate, in its distributed profit, then very properly it should pay an income tax, and that may be a fixed amount or a graduated amount, depending entirely upon which works out to the best advantage both to the business and the government. This much we must understand, that if business does not pay permanently, business will be driven out, and the government will lose a certain amount of income, the community will lose an opportunity for employment, and you will have destroyed something that is of value to the community.

Dr. Adams: I am very much interested in Mr. Drake's paper, because a year or so ago I recommended to the treasury department, and the treasury department recommended to Congress and the treasury department's recommendation was accepted, that the capital stock tax be abolished. I want to preface my remarks by this statement; I dislike personalities, but I want to say that Mr. Drake is the very highest type of public servant. If the income tax and the capital stock tax and federal taxes generally could be administered by men who are as genuinely studious and as genuinely disinterested and judicial in their temperaments and as finely inclined to make federal service a life career, as Mr. Drake, the answers to problems of federal taxation would have to be diametrically opposite to what they are, because I regard the matter of securing men of Mr. Drake's type, and more particularly in the federal service, of keeping them, the most important matter in the federal service—bar none. There is nothing too high that I can say of Mr. Drake's capacity in this connection. I say this much that my following remarks may not be misconstrued. Here is the question. I am facing gentlemen most of whom have had a great deal of experience in the valuation of corporations. You have all had to do with it; I have had to do with it. If you are conscientious and if you appreciate the difficulties of your job, how much time ought you to give and how much care and thought and long study, to each one corporation before you can reasonably feel satisfied you are right? This question of valuation is one of the most difficult things in the world. In my opinion, it is not to be obtained satisfactorily immediately, but only after careful study, weighing all these many factors which Mr. Drake says must be determined. Now then, the federal government, with the force of one hundred and twenty-eight, as Mr. Drake has said, has got to assess and value each year from the City of Washington three hundred and forty thousand corporations. They are collecting eighty-five millions. By an addition of one and three-quarters per cent to the income tax, we could get an equivalent amount; by

simply raising the twelve and one-half rate to fourteen per cent. or, say, fourteen and one-quarter.

A Voice: You would not get it this year, though.

Dr. Adams: You would get it this year, because the information of shrinkage of income tax is very vastly exaggerated, sir. That is one of the things there has been a lot of exaggeration about. The collections this last year were three billions, two hundred and some odd millions of dollars. The income tax shrinks, but it by no means disappears, even in bad years. Now, what I am getting at is this:—I am asking a practical question, because if I continue to serve as I did once before, as economic adviser to the treasury, I shall be confronted with this question—Is it worth while keeping a tax which could be replaced by the simple addition of one and three-quarters per cent—two per cent at the most—to the income tax rate—a tax that requires the valuation of three hundred and forty thousand corporations each year? If all those one hundred and twenty-eight people were Drakes, could you even do it then? That to my mind is a serious problem.

Then, one other question, assuming that you have got to keep it, why is it beyond our power to get for Mr. Drake the benefit of the help of the various state commissions and local assessors, who face this same problem throughout the country? Why couldn't the knowledge and information of both governments be brought together? In my opinion, the results and the details of these valuations, if we must continue to make them, made respectively by state officers and federal officers, ought to be pretty helpful, for mutual education, because the over-centralized condition of federal administration is one of its grave errors—I was going to say vices, but it is not exactly a vice, it is a misfortune. As I say, if we are going to continue these valuations, why can't we bring this mutual knowledge together? It is not an impracticable thing. At this particular point, I see no reason why there should not be great publicity, within reasonable bounds, of federal processes and results. I don't believe in full publicity of income tax returns, but I do believe that in this capital stock tax there should be publicity, and that there should be publicity of state results, and that there should be full and free interchange of information. I should like to know personally—I don't suppose I can get it—but I should like to know what a representative audience of men who work on valuations and taxpayers who must make valuations, feel about the possibility of a super-federal bureau, appraising with reasonable success three hundred and forty thousand corporations each year. And I also should really like to know, not in a critical spirit, what the real possibilities of joining federal and state knowledge together are.

JUDGE W. A. HOUGH of Indiana: Mr. Adams, I should like to ask you a question. Isn't it a fact that the returns that are made by corporations themselves of their invested capital are generally taken with practically no investigation at all by any department at Washington?

DR. ADAMS: Invested capital for excess profits tax?

JUDGE HOUGH: Yes.

DR. ADAMS: No, that is far from the truth.

JUDGE HOUGH: For capital stock tax?

DR. ADAMS: Mr. Drake can tell you all about that.

JUDGE HOUGH: You spoke about the enormous amount of work that would be done in arriving at the capital of these various companies. I have really been informed that practically nothing is done, and that that was one thing that is just taken as it is turned in.

DR. ADAMS: No, I think that is not true, and secondly, it would be very wrong if it were true, because the returns would be very unequal, and they ought to be worked over, in my opinion.

MR. DRAKE: Each return has an individual audit. The method of procedure is that a district is assigned to a group, and that district is distributed among eight men, with a group head, so that if you have a weak auditor in the group, he has only a small percentage of returns which are revised by the group head. Each return is individually audited, and I might explain how we are able to accomplish this work. The percentage runs that about two out of three are accepted as rendered; fifty per cent of the one-third require probably one letter to straighten out the difference; the other fifty per cent will consume the rest of the time in correspondence and interviews.

MR. J. L. SAYLER of Illinois: There is one situation about the valuation of corporations for the purpose of the capital stock tax that Dr. Adams referred to that I think might well be stated, and that is this, that generally speaking the corporations that make returns under this tax in a broad way might be divided into three classes, that is, the large corporations that would have a wide market for their securities, and then the second type, organized for profit, but which local people are interested in and have only a local market for their securities; then the third type, those rather closely held by a few people, who stand on a different footing, so far as the publication of what they are making or the valuation of their property is concerned, from the others. They would seriously object to having published in any way the records of their earnings or of their capital property. The threefold method of attacking

the problem of the capital stock tax, is, it seems to me, if we are to have a capital stock tax, the correct one, because there are ironed out in these three methods inequalities that might otherwise result.

One gentleman asked in what way the excess profits tax method of valuing property differed. In a broad way, under the old excess profits tax, the value of the property of the corporation was in the first place the actual amount of money that was invested in it, plus the accumulated profits and surplus, and plus, also, a certain amount of reserves that were held for contingencies. Now, the impropriety in using that basis for a capital stock tax is this, that you might, for instance, have a company that had formed a combination with others, and had had an opportunity of putting good will on their books, and had probably sold on that basis. That would be an entirely different thing from a company, for instance, that over a twenty-year period had formed no reorganization and had had no mergers, but which, on account of greater ability of its managers was earning a large income. Invested capital in the one case—in the case of the merger—would include the good will and items of that character, but the other company could not count good will in invested capital, for the purpose of the excess profits tax. On the question of capital stock under-estimated; if the capital is under-estimated on a mere balance sheet, that is ironed out in your net earnings. It would show there. Now I come to a third question, and that is this: In the case of valuation placed on the capital stock by the sales—by the market value of the stock—there again, in a company with a wide distribution of its stocks, it is very easy to ascertain a stock market quotation, either on the New York or Chicago or other exchanges throughout the country. When you come to the class of stocks not having a wide distribution but rather a large local distribution, the value may probably be based on actual sales which the company itself, in many cases, would be familiar with, and this would be checked by exhibit A, on the actual assets. But again, there is a type where there are no sales, and there the administrators of the law, either state or national, would have to fall back on the balance sheet statement and on the earnings, and not on sales. Therefore, if we are to have a capital stock tax, administered either by a state or by the national goevrnment, it will be necessary to use in a large measure the three different measures.

Mr. G. W. Mathews of Massachusetts: There is one aspect of the capital stock tax law that I think ought to be ironed out. That is the duplication of the tax which occurs in the case of holding companies. There is clearly a bad case of duplication. The subsidiary is taxed for full value of its capital stock, and then the holding company, which carries that capital stock, is taxed again on that same value which is reflected in the value of its own stock.

Some of us prepared an amendment when the Revenue Act of 1921 was pending at Washington, and Dr. Adams was, I think, of material assistance in getting that amendment before the proper committees, but the Senate, and Congress generally, for reasons of its own, took no interest. I suppose because nobody loves a fat man, nobody loves a holding company.

CHAIRMAN WHITNEY: Gentlemen, it is now twenty-five minutes of five. Mr. Moffett, what time does your automobile tour start?

MR. C. T. MOFFETT: It starts at a quarter of five. We will have the cars on the Third Avenue side.

Thereupon an adjournment was taken to 8:00 P. M.

(Adjournment)

SEVENTH SESSION

Wednesday Evening, September 20, 1922

Mr. Frank Roberson, of Mississippi, presiding.

Chairman Roberson: The conference will please come to order. I ask all those who are in the room to take seats as quietly as possible. Mr. Lord, when he asked me a day or two ago if I would preside tonight, said to me that I might introduce myself; that as long as he was on the program himself tonight, he thought it would be all right for the chair to make himself known. I thought that it was rather peculiar to introduce yourself to a strange audience, but on reflection, and since I have been reading the papers here for the last two or three days, I have come to the conclusion that the real reason why I am forced to introduce myself to the conference is that it may be somewhat difficult—possibly dangerous—to get a man to introduce a democrat to an audience in Minnesota, but since one of the duties of the chair is to introduce the speakers on the particular program, I have a chance of getting even with my good friend, Mr. Lord, who, of course, is from Minnesota. One of the cardinal principles of a Mississippi democrat is to never say anything good about a republican or anything bad about a democrat. He may expect to be introduced in accordance with this good old democratic custom.

You know, if I may be permitted to digress just a moment, we do not take our politics in some of these Southern states as seriously as you might think. There is a good deal of zest in the game. You may have noticed in the public press in the last few weeks that they have been having a few primaries down in South Carolina, Mississippi, and Texas, and you people who live in a state where they have two parties don't know anything about politics at all. You know that the only way we were able to beat Vardeman down there at all was finally to get out a great scare-head circular about something good he had to say in a newspaper he ran about two or three republicans. They just would not stand for that at all, even his own crowd. But, my friends, on reflection, since the first speaker of the evening is from Minnesota, and a man who has the ability and reputation which he does have, I am enabled on this particular occasion to lay aside the ordinary custom of mine, to which I just referred, and really introduce him or try to intro-

duce him in a way in which he should be presented to an audience of this state. Digressing is about the only thing I shall have to do with this program tonight. I want to have my say before anybody interrupts me; you cannot call me down. In making reference to Minnesota, it comes to my mind that in one of the military parks, located at Vicksburg, Mississippi—we call it the National Military Park of Vicksburg and it is supposed to be one of the most attractive parks in the United States—the finest monument happens to have been erected and put there by the State of Minnesota, in the memory of the valor of the soldiers during that battle. It is a wonderful thing, and I do not mention this as a mere matter of phrase-making, but if you happen to be in that part of the country at any time it would be well worth your while to go through the Vicksburg Military Park. It is a wonderful natural park, besides containing the very expensive and fine monuments erected by some of the Northern states on that battle ground.

But, coming to the serious part of these exercises tonight, I want to say to the people of Minnesota—those who may be here—that the National Tax Association has recognized for many years the ability of the president of this association and the present chairman of your Minnesota commission. Those of us from the other states have had the idea that Minnesota was somewhat in the forefront in remedying tax troubles and tax problems, and although you seem still to have problems here, I must say that, as compared with a great many states, you have made very great progress. A great deal of that progress I am sure must be due to the ability and energy of Mr. Lord, of your commission, and so, without any further remarks, I take pleasure in presenting Mr. Samuel Lord, the chairman of the Minnesota tax commission, who will now deliver to you his annual address.

(Applause, and all rise)

Mr. Samuel Lord of Minnesota: Mr. Chairman, ladies and gentlemen, and gentlemen of the conference: I wish I might say "ladies and gentlemen of the conference," but I think we have no lady delegates here. It would be very ungrateful of me indeed not to express my appreciation of this heartening demonstration. It will always remain one of my most pleasant memories. I might say to the chairman, that the reason why I did not introduce him was because I knew so many good things about him that I feared it would take up too much of the time of this conference for me to undertake to give all of them. The General is one of our membetrs who needs no introduction.

THE BRETTON WOODS RESOLUTIONS

ANNUAL ADDRESS OF SAMUEL LORD
President, National Tax Association

Three important resolutions were adopted by the National Tax Conference at Bretton Woods in 1921. All three of them deal with undesirable federal laws and practices and point out evils that can be corrected only by congressional action; nevertheless all of them have a bearing on state taxation and I feel it my duty to acquaint you with what has happened to them and to give you some idea of their present status and future prospects.

The first of these resolutions calls upon Congress to submit for the ratification by the states an amendment to the Constitution of the United States, prohibiting the exemption from income taxation of the salaries of public officials, and of the interest on future issues of federal, state, or municipal obligations.

The second resolution read as follows:

> "*Whereas,* at the first conference of the National Tax Association, held in 1907, it was resolved that it was the sense of that conference that inheritance taxes should be reserved wholly for the use of the several states, which resolution has been reaffirmed at subsequent conferences;
>
> "And *Whereas,* inheritance taxes have not heretofore been imposed by the federal government, except as emergency measures in times of war;
>
> "And *Whereas,* the federal estate tax now in force imposes an unduly heavy burden of expense upon the estates of deceased persons, in addition to the tax itself, out of proportion to the revenue received by the government, seriously interferes with the administration of such estates and delays final settlements;
>
> "*Be it Resolved,* That the estate tax should be recognized by Congress as a war measure only and should be repealed at the earliest possible moment."

The third resolution presented the views of the conference upon the troublesome problem of bank taxation, and reads as follows:

> "*Be it Resolved,* That in the opinion of this conference, Section 5219 of the United States Revised Statutes should be so amended as to permit the states to tax national banks or the shares thereof or the income therefrom, according to such systems as they may consider desirable, provided that such taxation shall not be at a greater rate nor impose a heavier burden than is assessed or imposed upon capital invested in general banking business and the income derived therefrom."

In line with the first resolution, several Joint Resolutions have been introduced in Congress and exhaustive hearings have been held by the Ways and Means Committee of the House, and, as a net result, House Joint Resolution No. 314, known as the "Green resolution," was reported by that committee to the House on May 3 last, with a recommendation that it be adopted.

This resolution reads as follows:

> "*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein)*, That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:
>
> "'ARTICLE —.
>
> "'Section 1. The United States shall have power to lay and collect taxes on income derived from securities issued, after the ratification of this article, by or under the authority of any State, but without discrimination against income derived from such securities and in favor of income derived from securities issued, after the ratification of this article, by or under the authority of the United States or any other State.
>
> "'Sec. 2. Each State shall have power to lay and collect taxes on income derived by its residents from securities issued, after the ratification of this article, by or under the authority of the United States; but without discrimination against income derived from such securities and in favor of income derived from securities issued, after the ratification of this article, by or under the authority of such State.'"

The committee in its report very strongly condemns the present system of exemptions for the following cogent reasons:

> "1. A large portion of property escapes taxation, thereby causing great loss of revenue.
>
> "2. It violates the ability principle of taxation and unfairly discriminates between taxpayers.
>
> "3. It impedes private financing.
>
> "4. It discourages investment in new enterprises.
>
> "5. It encourages extravagances in governmental agencies.
>
> "6. It grants a private subsidy to certain interests.
>
> "7. By withdrawing money from private enterprises it increases the rate of interest required for all enterprises not carried on by the government and thereby adds to the cost of living.
>
> "8. It creates social unrest; and that the only practical

remedy is by constitutional amendment such as proposed in the resolution offered by the committee.

"It will be observed that the form of the amendment does not forbid the further issuance of tax-exempt securities, but merely permits their taxation by the federal government on the one hand, provided it does not discriminate against securities issued by the states or under their authority in favor of national securities, and that each state, on the other hand, is permitted to tax the securities issued by the federal government, provided the state in levying the tax does not thereby discriminate in favor of securities issued by or under its authority. In other words, the several states are given the same rights with reference to federal securities that the national government has with reference to the state securities."

It will also be noted that the resolution does not mention the salaries of public officials, and the report of the committee is also silent upon the subject.

The committee report sets forth that the proposed amendment has the support of the National Tax Association, the National Association of Real Estate Boards, the United States Chamber of Commerce, the American Farm Bureau Federation, the American Economic Association, the Investment Bankers' Association, the Farm Mortgage Bankers' Association, the New York State Tax Conference, the Peoples Reconstruction League, the Ohio Tax Association, the President of the United States, the Secretary of the Treasury, and the governors of many states, and so far as the hearings before the committee disclose, and so far as I know, all of the prominent authorities on the subject of taxation favor the amendment. It is certainly in line with the recommendations of the model tax committee, presented to the conference held in Chicago in 1919; and so far as it goes, is in line with the recommendations made by the committee on tax exemptions in its report to the conference in 1920; and it reflects the deliberate judgment of the national tax conferences held at Salt Lake City in 1920, and at Bretton Woods in 1921, as expressed in the resolutions adopted at those conferences.

It is a matter of common knowledge that the great bulk of tax-free securities ultimately become the property of the rich and ultra-prosperous. To such people, and especially to that portion of them who prefer idleness to industry, tax-free government securities are very attractive. They are safe; they require little attention, and are entirely freed from the uncertainties and annoyances which are inseparable from taxation. Notwithstanding the fact that these people secure their bonds in the open market and by perfectly legitimate means, and are in no way responsible for such property being exempt from taxation, the truth remains that it creates a situation that causes a widespread feeling of distrust and discontent.

A system that will permit one man to have exempt from taxation an income of $25,000 a year from securities which possibly he obtained by descent or devise, and which taxes heavily another man who by his own personal exertions earns the same sum, is unfair and unjust, and when great estates consist largely, as they frequently do, of government securities which pay no tax whatever, the situation affords a wide opening for those who criticize and even seek to destroy our institutions. No other great country in the civilized world permits a situation of this kind to exist and it ought not to exist in ours. It is unnecessary, socially unjust, economically untenable, and should be abandoned at the earliest possible moment, as an unwise and unsound fiscal policy.

In order that the House committee might be fully advised as to the attitude of the conference on this important subject, I appeared before that committee in January and called attention to the resolutions adopted by the conference, and in a brief statement outlined the position of the conference as I understood it.

The Green joint resolution has a good start and I sincerely hope that it may be adopted, but I predict for it a long and tortuous journey before it reaches the goal.

The resolution expressing the disapproval of the conference with the federal estate tax, and requesting its repeal at the earlist possible moment was also placed before Congress, but so far as I am advised has received scant attention, if in fact it has received any whatever.

The tremendous drain upon the federal treasury at the present time to meet current expenses and interest on the public debt, finds Congress in no mood to relinquish the hold of the federal government on any source of revenue it can legally cling to and the federal estate tax is evidently regarded by Congress as belonging to this class.

It is not my purpose at this time to enter into a discussion of the merits of this resolution. The attitude of the conference is so clearly right and so completely in accord with the views of the vast majority of the students of taxation, that further argument addressed to any one outside of Congress would be a sheer waste of time. The matter, however, is one of much importance and deserves to have the unremitting attention of this and future conferences, until success finally crowns our efforts. No other body is likely to give it attention, and if we lose sight of it and cease our agitation for any length of time, the federal grip on this source of revenue—which should belong wholly to the states—will become so strong, and the federal policy so fixed, that any effort to secure a change will be utterly vain.

While the resolution setting forth the views of the conference on tax-free securities has received marked attention, the resolution

that has created the greatest agitation and received the most attention on the part of Congress is the one calling for the amendment of section 5219 of the federal statutes. This section, it will be remembered, is the one permitting the states to tax the shares of national banks, subject however to the following restrictions:

1. That the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state, and,
2. That the shares of non-residents of the state shall be taxed in the city where the bank is located and not elsewhere.

This so-called "permissive" statute was enacted in 1863 and has been twice amended, first in 1864, and again in 1868. It has remained unchanged for more than half a century.

A review of the decisions of the federal courts bearing upon this and upon earlier statutes is both interesting and instructive and well worth the time of anyone interested in the subject of bank taxation; but it is not my purpose at this time to review them at length, although the temptation to do so is very great. They are especially instructive as showing how in the course of years, statutes, and even the Constitution, are changed by the process of judicial construction.

Prior to 1865, the right of the states to tax the shares of national banks in the hands of the owners, without permission of the federal government, was unquestioned by the courts. In fact, the Supreme Court of the United States, speaking through no less a personage than Chief Justice Marshall, expressly held that the right of the states to impose and collect taxes on national bank shares was clear and undoubted. But in 1865 this same court, overlooking or ignoring its earlier decisions, held that Congress, through the doctrine of concurrent power, had the right by statute, to limit the power of the states in taxing such shares, and finally in 1898 the court, in the case of *Owensboro National Bank* vs. *Owensboro*, reported in 173 United States Supreme Court Reports, at page 664, held that "It follows then necessarily from these conclusions that the respective states would be wholly without power to levy a tax either direct or indirect upon the national banks, their property, assets or franchises, were it not for the permissive legislation of Congress." Thus between the years 1819 and 1898 we have the full swing of the judicial pendulum, the court holding in 1819 that the states had full power to tax the shares of national banks; in 1865 that the right to tax was concurrent, but that Congress, by reason of its paramount power, might exclude the states; and finally in 1898 holding that the states were powerless to tax such property, except by express permission of Congress.

On the other hand, in determining what Congress meant by the

phrase "moneyed capital", as used in section 5219, the courts have evinced a much more liberal attitude toward the states and by the magic processes of judicial construction have very much narrowed what would seem to be the manifest meaning of these words.

In a case arising in Pennsylvania in 1874, the supreme court held that because a local law exempted mortgages, judgments, and money owing on contracts for the sale of land, it did not follow that the restrictive provisions of section 5219 entitled the shares of national banks to a like exemption. Later, in a case arising in Delaware, where the only property subject to taxation was real estate, live stock and bank shares, the circuit court held that "the main purpose of Congress, therefore, in fixing the limits to state taxation on investments in the shares of national banks was to render it impossible for the state, in levying such a tax to create and foster an unequal and unfriendly competition by favoring institutions or individuals carrying on a similar business and operations and investments of a like character. . . . It is undeniable that national bank shares are subject only to a tax of one-fourth of one per cent, which is the same rate imposed upon each share of the cash value of the shares of the capital stock of every banking institution incorporated by or organized under the laws of the state of Delaware. It follows, therefore, that the complainant is not entitled to relief." And this decision was not appealed from or reversed. And in a long series of decisions the federal courts have held that the words "moneyed capital", as used in this statute, do not include within its purview "moneyed capital" which does not come into substantial competition with the capital of national banks; that they do not include deposits in savings banks, building and loan associations, or money belonging to charitable institutions which are exempted from reasons of public policy, and that they do not include shares of stock in railroad, mining, industrial, or public service corporations, although the shares of stock in such companies are represented by certificates showing that the owner is entitled to an interest in money value in the entire capital and property of such companies; and that a partial exemption of moneyed capital does not in itself violate the federal statutes and that such an exemption, to be violative of the statute, must be of a very material part of the moneyed capital of the state; until finally it came to be the settled belief of legislators, tax officials, and even bankers, that the term "moneyed capital" as used in this statute meant only competing banking capital. As stated by Judge Evans in the case of *First National Bank* v. *Covington,* reported in 103 Federal Reporter, at page 523, "All that is done is, under Section 5219, to guard money so invested against any form of state taxation which puts it at a disadvantage as compared with money invested in state banks." And this belief,

almost universally held, ripened into full conviction when the circuit court of appeals, in the case of the *National Bank of Baltimore* v. *The City of Baltimore* (100 Fed. 24), in an exhaustive, and I believe the most able opinion ever handed down on the subject, held that a three-mill local rate imposed by the state of Maryland on shares of foreign corporations, corporate bonds, notes, and evidences of debt, did not entitle the holders of bank shares to a similar rate, and this, notwithstanding the fact that at the time this case was tried all bank shares in Maryland were subjected to a twenty-mill rate. Taxes amounting to more than $600,000 hinged on the decision in this case. The banks had the undoubted right to appeal to the supreme court; but they were evidently convinced by the conclusive reasoning of the circuit court that the court was right and that an appeal would be of no avail. In any event, they acquiesced in the judgment of the court, and the state of Maryland has been taxing intangible property, including notes, bonds and evidences of debt, at the low flat rate of three mills on the dollar, ever since the year 1900, while shares in banks have been taxed at a much higher rate.

Convinced by this long line of decisions, and especially by the opinion of the circuit court in the Maryland case, that the term "moneyed capital" as used in section 5219 meant competing banking capital, and convinced also, by long experience, that intangible property, such as money and credits, cannot be effectively taxed by any methods the American people will tolerate, if taxed at the rates applied to real estate and tangible personal property, tax officials and legislators began to cast about for some method by which this class of property could be effectively and fairly reached and some revenue derived therefrom.

Impressed by the remarkable results obtained in the state of Maryland with its low-rate intangible tax, and following its lead, the states of Minnesota, Pennsylvania, Rhode Island, Connecticut, Missouri, Montana, Oklahoma, Kentucky, South Dakota, North Dakota, Iowa, Virginia, and Nebraska enacted similar laws. And the states of Wisconsin, New York, and Massachusetts enacted very effective and satisfactory income tax laws.

At the time section 5219 of the federal statutes was enacted, the wealth of the country was very largely tangible in character, easily reached by the assessors, and not difficult to appraise. Since that time the wealth of the country has greatly increased, and this is especially true of intangible wealth. In all of the states I have mentioned, until the low rate and the income tax laws were enacted, intangible property, and especially intangible property in the form of "money and credits" and stocks in foreign corporations, almost entirely escaped taxation. The little that was reached usually belonged to widows and orphans. I know of no state

where intangibles are taxed by the same agencies and at the same rates applied to tangible property, where more than a very small fraction of it ever reaches the tax rolls. Whether it is evaded because it can be easily concealed or whether it is because the tax rates in municipalities where most of such property is owned are prohibitive and confiscatory, or whether both of these reasons actuate the owner, I do not know, but the naked and uncomfortable truth remains that very little of it ever reaches the tax rolls; and very little revenue is derived therefrom.

The last year that the general property tax was in effect in Maryland, bonds, notes and other evidences of debt assessed in the city of Baltimore amounted to only $6,481,047; the following year under the low rate tax law the assessment climbed to $58,885,000, and in 1922 reached the impressive sum of $267,000,000.

In Minnesota we tax "money and credits" at the low flat rate of three mills on the dollar. In 1910, the year before the low rate took effect, there were 6200 people in the state assessed for money and credits, and we received, all told, $379,754 in revenue. In 1911, the first year under the low-rate law, there were 41,439 people assessed for $115,481,807; and in 1921, the last year for which figures are available, there were 118,846 people assessed for $425,745,839, and the revenue obtained amounted to $1,277,242. The experience in all of the other states applying low-rate taxes to intangibles has been fully as satisfactory; and the results obtained in Wisconsin, Massachusetts and New York with their income tax laws have been fully as gratifying and pronounced.

The futility of attempting to tax money and credits at the same rate imposed upon bank stock, and the wisdom of the low-rate tax laws in Minnesota and other states have been fully recognized by Congress. By an act of Congress, enacted several years ago and still in effect, money and credits in the District of Columbia are taxed at three * mills on the dollar, the same as in Minnesota, and banks are taxed six per cent of their gross earnings—about twice as high as the tax imposed in New York, where many of the national banks are contesting their taxes.

The plain truth is that owners of bank stock, in common with all other taxpayers, are not injured, but on the contrary are benefited by these low-rate taxes on intangibles, because these taxes have increased the revenues from such property enormously and as a result have decreased the taxes on all other property proportionately, including bank shares of course. As the court very pointedly asked in the Baltimore case, "If this section (the three mill tax act) is stricken out, will the national banks be in any better plight?" The banks of Maryland evidently thought not, for they

* Recently changed to five mills.

did not appeal from the decision and have been paying their taxes without protest ever since.

From the time the Baltimore bank tax case was decided in 1900, up to the month of June, 1921, with the possible exception of a few disgruntled bank officials in the states of Virginia, Massachusetts, and North Dakota, the low-rate money and credit tax laws, and the state income tax laws were working smoothly and apparently to the complete satisfaction of people generally, including the owners of bank shares. There was a feeling everywhere that a real step forward had been made in tax reform, when suddenly, like a bolt from a clear sky, came the decision of the supreme court in the case of the *Merchants National Bank of Richmond* v. *The City of Richmond*, reported in 256 United States Supreme Court Reports, page 619.

Under a law in the state of Virginia and an ordinance of the City of Richmond, bank stocks, both state and national, were taxed at the rate of $1.75 on each $100, while the rate imposed upon intangibles, including bonds, notes, and other evidences of indebtedness, was only 95 cents on each $100 of valuation. (I might say in passing that the banks in Minnesota and many other states would regard themselves "in clover" with rates like these.) The Merchants National Bank contested its taxes, on the ground that they should not have been levied at a greater rate than 95 cents on the $100, the rate imposed upon intangible property. The city won the suit in the state courts, the supreme court of Virginia holding that the purpose of section 5219 was to prevent discrimination by the states in favor of state banks as against national banking associations, but the supreme court of the United States, on appeal, reversed the state court and held that the term "moneyed capital" included "not only money invested in private banking, properly so called, but also included investments of individuals in securities that represented money at interest and other evidences of indebtedness, such as normally enter into the business of banking," and also held in effect and without qualification "that bonds, notes and other evidences of indebtedness came into competition with national banks in the loan market."

Had this been the first decision to define the meaning of "moneyed capital" as used in section 5219, there would have been no occasion for surprise, but in the light of the earlier decisions and the almost universal interpretation given these words by legislators, tax officials, and bankers generally, as well, it is unfortunate, to say the least.

Inspired no doubt by the success of the Richmond bank, many banks in the states I have mentioned have begun suits to contest their current taxes and to recover back taxes already paid, and like suits are threatened in nearly all of the states having laws not

in harmony with section 5219 as construed by the court in the Richmond bank case. The situation brought about by this unlooked for decision is therefore very acute in nearly all of the states having low-rate intangible or income tax laws.

In order to obtain relief and to have the matter promptly and properly laid before Congress, I invited the tax officials of the states most vitally interested to meet in Washington to consider the matter and to draft a suitable curative amendment to section 5219. The meeting was held December 12, 13, and 14, 1921, and was attended by representatives from sixteen states. After most careful consideration of the needs of all the states and of the banks as well, the meeting adopted the following preamble and resolutions including a draft of an amendment to the obstructing statute:

> "*Whereas* a recent construction of Section 5219 United States Revised Statutes, by the Supreme Court of the United States in the case of *Merchants National Bank of Richmond* v. *City of Richmond,* decided on the 6th day of June, 1921, has created a situation which threatens to disrupt the entire tax systems of many states of the Union and seriously to affect the systems of many others; and,
>
> "*Whereas* Section 5219 was enacted in the year 1864 and was amended to its present form in 1868, more than half a century ago, and prior to the ratification of the Fourteenth Amendment to the Constitution of the United States, which guarantees equal protection of the law to all, including national banks, and at a time when prejudices against national banks were so pronounced in some states as to render necessary the restrictions embodied in the statute; and,
>
> "*Whereas* the national banks have grown to such an extent in prestige and resources and have become such an integral part of the local community life that all danger of discrimination by the states has passed, a condition which renders unnecessary the special protection afforded by the statute of 1868, as recently interpreted by the courts; and,
>
> "*Whereas* the tendency among the states has been toward the adoption of more modern systems of taxation, which have aided materially in bringing about a more equitable distribution of the burdens of taxation; and,
>
> "*Whereas* the results accomplished through such legislation must be sacrificed by a return to old methods, with their resulting inequalities, or national banks must be favored to such an extent as to bring reproach upon the more equitable systems, unless Section 5219 is amended so as to allow the states to tax national banks in the same manner and to the same extent as they tax state banks; and,

"*Whereas* the situation is very acute in all of those states which have adopted the more improved methods and is causing those states which are contemplating the adoption of such methods to mark time pending some remedial legislation which the Congress of the United States alone has power to enact; and,

"*Whereas* we are now convinced that a change of the law may be accomplished without any injustice resulting to national banks in any state;

"*Now therefore, be it Resolved,* That we the tax officials of the various states in conference assembled in the City of Washington, D. C., on the 12th, 13th and 14th days of December, 1921, for the specific purpose of considering means whereby existing conditions may be remedied, do respectfully recommend that Section 5219 of the United States Revised Statutes be speedily amended by the Congress of the United States, so as to adapt the tax on national banks to existing systems of state taxation and at the same time to protect them against unjust discrimination in favor of state banks or trust companies doing a banking business, and to this end we respectfully recommend the following as a substitute for said section:

"'Section 5219—The legislature of any state,

"'1. May provide for the taxation of the real property therein of any national banking association located therein, in the same manner and at the same rate as other real property in the same taxing district is taxed for public purposes.

"'2. May also provide for the taxation of either, (a) the income of such association, or (b) the shares of such association, subject to the restrictions that whichever of the above classes shall be chosen, the rate or rates of tax imposed shall be not greater than the lowest uniform rate or graduated rates imposed in respect of such class on banks, banking associations, or trust companies doing a banking business, incorporated by or under the laws of such state, other than savings banks or similar non-stock corporations organized for the mutual benefit of depositors; and if the shares of such association are taxed, the shares owned by non-residents of such state shall be taxed in the taxing district where such association is located and not elsewhere.

"'3. May also, if the state provides for the taxation of individual incomes, include as a part of taxable income the income from the shares of national banking associations, provided that the income from the shares of banks, banking associations, and trust companies doing a banking business, incorporated by or under the laws of such state, is also so included.'

"Any tax upon shares of national banks heretofore paid, levied or assessed which is in accord with the provisions hereof, is hereby legalized, ratified and confirmed as of the date when imposed."

The bill proposed in these resolutions was introduced in the lower House of Congress on December 15, 1921 by Representative McFadden, chairman of the House committee on banking and currency, and is designated H. R. 9579 but is generally known as the "McFadden bill".

This bill if it had been enacted into law would, I am sure, have afforded every needed protection to the banks and at the same time would have insured the retention of the low rate and income tax laws in states which have them, and would have made it possible for all other states to move forward with much needed tax reforms. But the bill did not pass. It was not even favorably recommended by the committee. After hearings covering five full days, at which tax officials, bankers, and lawyers representing banks in litigation were listened to with commendable patience, the committee, after several weeks of deliberation, pigeonholed the McFadden bill and reported out a bill of its own, H. R. 11939. The only change in the present law made by the committee bill is to permit the states to impose a tax on the net income of the bank at a rate not greater than is assessed on the net income of other moneyed capital. The bill also permits the states to validate taxes paid, levied or assessed since January 1, 1917, so far as they are in accord with the provisions of paragraph one of section one of the act; but this provision is so palpably worthless that the bill would have been a much more creditable production without it. This bill, if passed, might possibly have some little value in states having income tax laws, but would be utterly valueless in states applying low-rate taxes to intangibles. The bill passed the House with very perfunctory opposition, June 14, 1922, and is now before the Senate.

In order to save something from the wreck of the McFadden bill, the committee of tax officials having the matter in charge drafted S. 3695, which was introduced in the Senate by Senator Kellogg of Minnesota on April 20 last. The bill, eliminating the enacting clause, reads as follows:

"Sec. 5219. That nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares in assessing taxes imposed by authority of the State within which the association is located, but the legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject to the following restrictions:

"'1. (a) That the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital employed in the business of banking.

"'(b) That in any State where a tax in lieu of a property tax is assessed upon the net income derived from such other moneyed capital, such State may, in lieu of a tax upon the shares, impose upon the bank an income tax, assessed upon the net income of the bank, but such tax shall not be at a greater rate than is assessed upon the net income of such other moneyed capital.

"'2. That the shares of any national banking association, owned by non-residents of any State, shall be taxed in the city or town where the bank is located and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either State, county, or municipal taxes to the same extent, according to its value, as other real property is taxed.

"'3. That the provisions of section 5219 of the Revised Statutes of the United States as heretofore in force shall not prevent the legalizing, ratifying, or confirming by the States of any tax heretofore paid, levied, or assessed upon shares of national banks, or the collecting thereof, provided such taxation is not greater than the taxation imposed for the same period upon banks, banking associations, or trust companies doing a banking business, incorporated by or under the laws of such State, or upon the moneyed capital or shares thereof.'"

Although not as broad as it ought to be, this bill nevertheless overcomes some of the glaring defects of the bill passed by the House (H. R. 11939) and meets most of the specious objections made by the House Committee to the McFadden bill.

Hearings on this bill were held by a sub-committee of the Senate committee on banking and currency early in July; and the same committee of tax officials that appeared before the House committee, in support of the McFadden bill, appeared in support of this bill; and it was opposed by Judge Paton, representing the American Bankers' Association, Judge Bryan representing the Virginia Bankers' Association, and by a number of attorneys representing banks that are contesting their current taxes or seeking to recover taxes already paid.

Great pressure is being brought by the bankers' associations to obtain an unfavorable report, and the outcome at the present time is, at best, uncertain. While we are still hopeful that in the end we shall be able to secure a satisfactory amendment, it would be folly to underestimate the strength of the opposition. The American Bankers' Association is one of the best organized and most influential civic organizations in the United States today, with

subsidiary organizations in nearly every congressional district, with a state organization in every state and territory, having permanent salaried secretaries, all united in a national organization, with permanent headquarters in Washington and New York, and with an able and efficient corps of permanent salaried officials and employees at each headquarters. Add to this the fact that the rank and file of the association is made up of many of the most influential citizens in nearly every city and village in America and you can understand how effectively it functions and what tremendous pressure for good or evil it can bring to bear upon Congress or any other legislative body.

Prior to the hearing before the House committee two attempts were made by a committee appointed by tax officials and committees appointed by the officers of the bankers' association to agree upon an amendment to the obstructing statute; but after a full discussion of the questions involved, the committees were unable to agree and both meetings were barren of results.

The attitude of tax officials and tax students generally is, I believe, correctly stated in the resolutions which were adopted in Washington last December and which I have read; and these resolutions are clearly in line with the resolutions adopted by the conference at Bretton Woods in 1921.

The attitude of the American Bankers' Association, if correctly stated by their officials and spokesmen, is, in my judgment, neither far-sighted nor public-spirited. Mr. Sands, chairman of the legislative committee of the bankers' association, stated the attitude of the association to the House committee as follows (I quote from the record): "We think that Section 5219 meets all present needs and should not be altered in any respect." And Judge Paton, the general counsel of the association, stated the attitude of the association even more pointedly as follows: "You know our attitude now, I believe: It is that we object to any amendment to 5219, on the ground that it is needed for the protection of the national banks; that there is no demand for it from tax commissioners of a large majority of the states, and that in the new states where their classified systems are out of harmony with 5219 it should be incumbent upon those states to amend their tax laws rather than to seek the amendment of the long-standing federal protective laws." That these very frank statements correctly set forth the attitude of the officials of the American Bankers' Association I have no reason to doubt; but if the reasons which prompted the conference at Bretton Woods to urge an amendment to section 5219 were fully understood, I am confident that very few public-spirited owners of bank stock would seriously oppose the change we ask in this archaic statute. But if they should oppose, I am even more confident that the other taxpayers of the country, when they come

to understand the situation, will demand an amendment in no uncertain terms. And when the matter is presented to the voters, as it ultimately must be, unless the statute is properly amended, it will be very difficult, I am sure, for bankers to convince the public that their institutions are so weak and helpless that they require special protection in the matter of taxation, not enjoyed by farmers, merchants, manufacturers, public service corporations and others engaged in equally useful and legitimate enterprises. But I am loath to believe that matters will ever come to such a pass. I choose rather to believe that upon sober second thought, bankers generally will cease to take counsel of their fears and adopt the broader and more public-spirited views held by the officers of the First National Bank of Minneapolis (the largest institution of the kind in this state), as expressed in a letter written by them while the McFadden bill was under consideration by the House. This interesting letter reads as follows:

"First National Bank,
Minneapolis, Minn., Feb. 3, 1922.

Hon. Samuel Lord,
Chairman, Minnesota Tax Commission,
St. Paul, Minnesota.

Dear Sir:

We have examined the McFadden bill now pending in Congress and wish to advise you that we are in favor of the passage of the same or one covering substantially the same ground.

We wish to assure you that we are not disposed to put any obstacle in the way of the collection of the 1921 state personal property tax on national banks. This tax is assessed and levied against national banks upon the same basis as is the tax upon state banks, and with this general system we are quite satisfied.

We are advised by our attorneys that upon the passage of the McFadden bill, or one substantially like it, the assessment and levy of personal property taxes in this state upon national banks will be validated and that the same may then be safely paid by the national banks.

Respectfully yours,

(Signed) F. M. PRINCE,
Chairman of the Executive Committee.
F. A. CHAMBERLAIN,
Chairman of the Board of Directors.
C. T. JAFFRAY,
President."

Nor do I feel disposed to pass unnoticed the statement of Judge Paton before the House committee that "there is no demand for an amendment to Section 5219 from tax commissioners of a large majority of the states." It is true that tax officials from only sixteen states were present at the meeting held in Washington last

December, but it is also true that a majority of the states not represented approve our action, and are strongly in favor of an amendment to the obstructing statute, substantially as urged in the resolution adopted at Bretton Woods. I do not know where the Judge obtained his information, but I am sure that he was misinformed, and I am equally sure that he would not have made the statement if he had not believed it to be true.

The attempt, wherever tried, to tax money and credits on the same basis as tangible property or the capital stock of banks has always proved a dismal failure, and if experience has any value in divining the future, every attempt to so tax it in the future will meet the same fate. About the only people who have ever been successfully taxed on their money and credits, when such property was legally taxable on the same basis as bank stock, have uniformly been those in the community least able to pay. Moreover, the money and credits taxed under income and low-rate tax laws do not in any true sense compete with banking capital. The money loaned by individual citizens on paper similar to that taken by banks in the ordinary course of business is so trifling an amount, when compared with the enormous volume handled by the banks, that to say that it competes is a mere travesty on words. And to say that mortgages, bonds, and other long-time investments of that kind are in harmful competition with the short-time credits of banks, approaches also very near to the realm of nonsense.

The earnings of banks come very largely out of deposits rather than capital and I submit that the only capital that is really competing with the capital of national banks in any true sense, or in an appreciable degree, is the capital of state and private banks, and trust companies doing a banking business.

That this was the view entertained by bankers generally in all of the states having low rate and income tax laws from the time of the decision in the Baltimore bank tax case in 1900 down to the time of the Richmond bank tax decision in 1921, is clearly shown by the fact that in many of these states the low rate and income tax laws were sponsored in the legislatures by prominent bankers, and in nearly all of them had their earnest and effective support; and by the further fact that in all of these states, except Massachusetts and North Dakota, ever since these laws were enacted, until the Richmond decision was handed down, banks paid their taxes without protest, and their stockholders paid their low rate and income taxes with apparent satisfaction. In all these years not a single complaint has been made to the Minnesota tax commission that national banks were being illegally taxed.

There were undoubtedly ample reasons for incorporating in section 5219 at the time of its enactment the provision that the taxation of the shares of national banks "shall not be at a greater

rate than is assessed upon moneyed capital in the hands of individual citizens of such state." The Fourteenth Amendment to the federal constitution, which guarantees to every person, and to every corporation as well, "the equal protection of the laws," had not been adopted at that time. National banks were then a mere experiment and were regarded in many localities with extreme distrust; they were entering a field which had theretofore been monopolized by state and private banks, and the law authorizing their incorporation was regarded by many eminent statesmen as an unwarranted encroachment upon state and private rights. In these circumstances, Congress evidently felt that the statute in question was necessary to give these infant institutions a fair start and to protect them while becoming established from the possible danger of unjust and discriminatory state laws.

But whatever the reason for its enactment, section 5219 has remained unchanged for more than fifty years. During that time the country has moved forward by leaps and bounds; business methods have been revolutionized and the forms of wealth, once simple, have become very complex. To meet these new conditions taxing systems must also change or become obsolete, unworkable, and unjust. This law may have been well suited to conditions in 1868, but it stands today a serious obstacle to tax reform, and it is passing strange that the officers of a great organization like the bankers' association are unable or unwilling to recognize this fact.

While it is true that national banks derive their charters from the federal government and are in a technical and limited sense federal agencies, in a much larger and truer sense they are local institutions, depending almost entirely upon the states and municipalities where located for protection, and upon the local community for business; and in all fairness they should not be accorded special privileges, but should stand upon an equal footing with state institutions in the matter of taxation. But however this may be, national banks are now so firmly intrenched that they are no longer menaced by the competition of such moneyed capital as is now taxed under low rate "money and capital" and income tax laws. On the contrary, like all other honest taxpayers, they are greatly benefited by these laws. In the face of the very satisfactory results obtained under these laws, the opposition of the bankers' association to any change in section 5219 is hard to understand. Possibly a little history of what happened in Virginia, shortly after the triumph of the Richmond bank in its tax case, may throw some light upon this question. Before the ink on that trouble-making decision was fairly dry, the bankers of Virginia got busy and urged the legislature to pass a law taxing intangibles at five and one-half mills on the dollar and agreed that if such a law were passed, they would pay at the rate of eleven mills on the

dollar of the value of their bank shares. And strange as it may seem, this law was actually passed and the bankers of Virginia are paying taxes under this arrangement today, and with no apparent alarm about competing "moneyed capital" in the hands of individual citizens; the very thing that caused them so much distress at the time of the lawsuit. Of course the motive of the bankers in seeking this arrangement is transparent and easy to understand. It relieves them from paying on their shares at the very high general property rates that obtain at this time in nearly all of the cities and villages of Virginia; and at the same time places them in a position where they can successfully contest their taxes, whenever things do not go exactly to suit them. And yet in the face of this treatment they tell Congress they are afraid the legislature, unless limited in its power to tax, may treat them unjustly. The reasons which impelled the legislature to accept this arrangement are not so clear, but I am creditably informed that they acquiesced because they feared that if the general property tax was restored on intangibles it would drive much needed capital from the state. Thus the banks of Virginia are paying into the coffers of the state fifty-five cents on each hundred dollars of the value of their bank shares, not because the law exacts it, but in compliance with a so-called "gentleman's agreement". Such an arrangement ought not to be necessary. It does not comport with the dignity of a great sovereign state. And yet the humiliating plight of Virginia is shared by a number of sister states. Conditions like this ought not to be tolerated. Either the hampering federal statute should be so amended that the states may safely perpetuate their very desirable low rate "money and credit" and income tax laws, without bringing the tax on bank shares down to the same level, or else the states having such laws will undoubtedly be driven to repeal them and return once more to a system suited only to a bygone age.

Because of defalcations and criminal mismanagement by a few unworthy bankers there is undoubtedly some prejudice against banks in a few scattered localities, but this feeling is neither general nor likely to become so, unless brought about by the bankers themselves. But whatever the public attitude may have been toward banks in other days, they are recognized everywhere today as among our greatest and most useful institutions. Modern civilization could hardly function without them, and they deserve and should receive every needed protection. But national banks have certainly outgrown their swaddling clothes and it would seem that laws designed to protect them in their infancy might now be safely changed.

Bankers as a rule are very conservative. The very nature of their business makes them so. No thoughtful person would wish them to be otherwise. But surely a spirit of conservatism that

led them to insist that an outgrown statute, which has become a serious impediment to rational tax reform in every state of the Union, shall not be amended, to meet new and changed conditions is not to be commended. Such an attitude is utterly lacking in public spirit. It is conservatism gone to seed—"standpatism" carried to the verge of folly.

Instead of obstructing the cause of tax reform, bankers should be among the first to lend a helping hand, and in any event their purely selfish wishes should be made to yield to the common good of all. If Congress does its duty, and I trust that it may, section 5219 will be amended in accordance with the resolutions adopted by the conference at Bretton Woods.

I have dwelt upon these resolutions somewhat at length in order to give you some idea of their present status and to emphasize once more their great importance. All three of them have a vital bearing upon tax reform, and I trust that they may have your earnest and unremitting attention, until they pass from the realm of contention into the realm of things accomplished.

CHAIRMAN ROBERSON: Mr. President, I am sure that I bespeak the minds of the conference when I say that we are greatly indebted to you for your masterly paper, and to add that you have set a very high mark for those who follow you in the responsible position of president of the association, in their annual addresses.

The chair takes it that of course it would not be appropriate to have a discussion of the president's address. It happens, however, that the two matters to which he has addressed himself—tax-exempt securities and the taxation of banks—are set apart as a special feature of the program later on, tax-exempt securities for this evening, and bank taxation for tomorrow afternoon. In that view of the situation it would seem proper to the chair that we should go immediately to a discussion of the next number on the program—tax-exempt securities. May I take the liberty of calling to your attention this quotation from President Harding which you will find on the front of your program, with reference to tax-exempt securities, to-wit:

> "Many of us belong to that school of thought which is hesitant about altering the fundamental law. I think our tax problems, the tendency of wealth to seek non-taxable investment, and the menacing increase of public debt, federal, state, and municipal, all justify a proposal to change the Constitution so as to end the issue of non-taxable bonds. No action can change the status of the many billions outstanding, but we can guard against future encouragement of capital's paralysis, while a halt in the growth of public indebtedness would be beneficial throughout our whole land."

Mr. Walter W. Law, Jr., of New York: At the risk of interrupting, I want to make just a very brief motion. It seems to me that the address of the president is such a remarkably clear and able presentation of very important matters that are before the conference, that it would be particularly fitting if it were printed in one of the Bulletins, so as to be given early, the widest possible circulation, and if it is in order, and you permit me, I should like to offer the motion that such action be recommended by this conference.

Chairman Roberson: Mr. Law, may I be permitted to make the suggestion that in view of the fact that the amenities of the occasion would hardly seem to allow a discussion of the president's address, you withhold your motion on that subject and have it made when the matter of bank taxation comes before the conference in its regular order.

Mr. Law, Jr.: Certainly.

Chairman Roberson: The subject for discussion—the matter of tax-exempt securities—is one which to my mind is full of responsibility for this conference. It is one that as time goes on the people of this country are bound to be more and more interested in. The thing that troubles me personally most is the possibility that the present situation may be allowed to continue. There is to my mind within the present situation a dangerous element of social discontent that may not know any reasonable bounds in the future. This matter of exemption of a certain class of people virtually amounts to the super-imposing of an additional burden upon real estate, and as the amount of the exempt securities increases, it may in the years to come cause so much discontent among a very large class of the American people that it is somewhat disconcerting to think just what may really result. Mr. MacFadden, chairman of the banking and currency committee, has just written Mr. Holcomb that, due to the closing days of Congress and to the tariff act, in which he is particularly interested, he has found it impossible to be here, but we are extremely fortunate in having with us this evening Professor Adams, the vice-president of the association, and a man who is recognized, of course, as an authority on all questions affecting taxation in this country, and I am going to take the liberty of calling on Professor Adams to address us at this time.

Professor Thomas S. Adams: Mr. Chairman and gentlemen: You observe a person drafted for the good of the service on sudden notice, to discuss this question. I feel very much like the Colorado recruit, who volunteered for service in the World War and felt a little nervous and said to a comrade in the trenches: "What is this here thing about going over the top?" His friend

said something like this: "They get you up about three o'clock on a cold morning and the captain says 'let's go,' and you rises up and runs forward one hundred paces, and you drop, and you whale around in the mud and rain for a while and the captain says, 'forward,' and you goes forward about another hundred paces and then you drop, and them Hun bullets whistle over the top and the shrapnel is shrieking and oh Lord, boy, and the captain says, 'rise up, boys, go some more,' and you go a hundred more paces, and them Hun bullets whistle and the shrapnel shrieks, and the captain says, 'drop,' and then you rise up and run another hundred paces and suddenly you says, 'good morning, Jesus'."

I don't know whether that is an appropriate story to begin such a serious subject with, because this is a serious subject. It is such an extraordinary subject that President Harding has felt called upon to notice it in a message in the words to which the chairman has already called your attention. In its principal aspect I feel that I can do nothing more than emphasize what has already been said as to the seriousness of the social problem that is likely to be created if there arises in this country a situation in which the wealthiest men — the men most able to bear taxation — get themselves, by reason of the existence of these tax-free bonds, into an isle of safety, in which they are absolutely sheltered from the burden of supporting government, to which, as Justice Holmes of the supreme court has said, they owe their protection and in some senses their lives. It is necessary that the richer classes of the country pay taxes and be known and seen to pay taxes. There are many direct and indirect ways that are open by which it is possible to reach the very wealthy elements of the country, and I feel just as the chairman of this meeting obviously feels and as the president obviously feels; that this question of the creation of class conflict, of hatred for the wealthier classes of society, is perhaps the most important phase of this problem. I don't know how many of you have had your attention called to figures which I think I originally prepared, showing the extent to which this exemption has gone.

I was interested to find out how rapid under the federal law the escape of very wealthy members of society was by reason of the tax-free bonds, and while the figures which I am about to quote did not describe this with scientific accuracy, in a rough way they represent what is happening. There was reported for the year 1916 by persons having an annual income of three hundred thousand dollars or more, practically nine hundred and ninety-three million dollars of net income. I am talking about the very rich now. The same thing would be true of any other group. I took that group because in treasury discussion at Washington it has been usual for a number of years to regard the people with in-

comes of three hundred thousand dollars or more a year as typical of the very rich. Now, by 1919, after years of unexampled prosperity, during which the incomes of neither the rich nor the poor in this country were shrinking, but in which they were manifestly growing, the reported taxable income of that group had shrunk to four hundred and forty millions of dollars. In other words, there was a reduction to less than one-half of what there had been four years earlier. While that is to be explained partly by the variety of methods of avoiding federal taxes by the very rich, it has to be principally ascribed, in my opinion, to the influence of the tax-free bond. The testimony of bankers and of experts, and of people who advise the wealthier members of American society, is universal as to the extent that they are investing their new wealth in increasing amounts in tax-free securities, and as to their growing habit of transferring their old wealth to tax-free securities. That puts in concrete form the seriousness of this problem.

Now, President Harding and others have called attention to other baleful effects and results of the possibility of investing in tax-free securities, of which there are probably fifteen billions outstanding at the present time, in one form or another, enough certainly to take all the investments of the very rich people of this country, or sufficient to practically exempt them from taxation. The evils are first of all the unfair competition in which it places private industry. I want to stop to discuss that a moment, because I think it has sometimes been exaggerated, and that it ought to be placed in its proper light. Quite obviously, if you think about it, the man who buys state, local or exempt federal bonds is not wholly tax-free. I like, as Mr. Link said this morning, to concède all that is strong in the opposing case, if I am talking for anything. The man who buys a municipal bond or a state bond is not wholly tax-exempt. It is perfectly obvious that the so-called legal exemption feature of that bond makes him pay a higher rate of interest than he would otherwise pay. The city or the state floats its indebtedness at a lower rate of interest than it would otherwise pay. To that extent the individual is paying, because he takes a lower interest rate. He is paying some tax indirectly. Now, that is true, and it is also true that cities are enabled to borrow at lower rates of interest because of the tax-exemption feature, and it is true that the federal government is enabled to borrow at lower rates of interest. Now, in talking over carefully the real evil of the tax-exempt bond, we ought not to attempt to deny those facts. It is also true that the competition between the public borrower and the private borrower is not quite as unfair as it seems on the face, but it is nevertheless true that this thing is a grave evil, and that public bodies—states, municipalities, and the federal government—lose far more in taxes than they gain in reduced interest;

it is a losing proposition, and must be a losing proposition wherever you have a system of progressive taxation, and that is easily demonstrable. It is also true that private industry does suffer from unfair competition by reason of this exemption; and worst of all, this exemption, in my opinion, perverts the normal and natural habits of investment.

Municipal and state and public securities of this country are gilt-edged; they offer the best security, the nearest approach to absolute safety that we have. They ought to be investments of those persons who have small amounts to invest, in which safety is paramount. Now, what happens is that under the existing situation the very rich become the principal owners of these bonds; the men who ought to be taking the grave industrial chances—who ought to be investing in the hazardous things—who ought to be supplying the money for those dangerous investments which are legitimate and necessary, but which ought to be invested in and be supported by the people who can afford to lose. The oil schemes, the dangerous mining ventures, are getting in increasing degree the investments of the poor, and the rich, who ought to carry those grave risks, are turning from them to invest in tax-free securities. Thus the normal habits of investment have been perverted.

It is also true that many of our private enterprises which have through past habit and custom been accustomed to rely for support upon the well-to-do investor, find that he now is seeking the tax-free bond. The testimony of investment bankers and brokers is all unanimous to the effect that the ordinary customers, to whom they have turned to support the railroads, the industrials, and to take over the new bonds that must be issued from time to time, are no longer available. In those ways private industry has been seriously handicapped.

I return just for a moment to the assertion I made a moment ago, that while the states and cities, by reason of this exemption feature, are enabled to borrow more cheaply than they can borrow without the exemption feature, it is nevertheless a losing game for the state and city. I think that is plain if you stop to think a moment. You have federal taxes running from 58 per cent down. The highest rate in the federal income tax is a little less than 58 per cent. Now, let us take a very wealthy man, subject to a 50 per cent tax, and then take another man less wealthy, subject to a 25 per cent tax; let us suppose, just for the purposes of convenience, that the rate on absolutely secure taxable investments is five per cent. Now then, the man paying a 50 per cent tax, if he invests in taxable securities, is going to net two and one-half per cent. That is all he is going to get. He is going to pay fifty per cent in taxes, half of his interest. He could then afford, if neces-

sary, to lend to states and cities and to the federal government, on tax-exempt federal securities, at two and one-half per cent. It would net him just as much as a five per cent taxable bond. But, the important point is that there are very few, relatively speaking, of those men who are paying the fifty per cent tax, and if the states and cities want to float all the bonds that it is necessary for them to float, they have to seek classes of taxpayers that are paying a smaller tax. They have to come down and get into the market of the people who are subject to twenty-five per cent taxes. But to the man who is subject to only a twenty-five per cent tax, this exemption is worth one-quarter of five per cent, which is one and one-quarter per cent. All he will bid for this privilege of exemption is one and one-quarter per cent; and if you go down to the man subject to only twenty per cent income tax, the exemption feature is worth only one per cent, and that is all he will pay for it. Now then, to float the large volume of state and municipal securities—and they must be floated—you have to appeal to the taxpayers subject to from fifty per cent taxpayers down to the forty, thirty, twenty-five and twenty per cent, and you are going to sell your privilege of exemption at that figure which will appeal to the lowest of the classes of taxpayers to which you must sell. In other words, all you are going to get for your exemption privilege is one per cent, but every taxpayer subject to more than twenty per cent tax is going to save more in taxes than he loses in taking the smaller interest rate. That is the reason why under any system of progressive taxation, an exemption feature must cost the government more in taxes than it saves them in reduced interest payment.

There are one or two other features of this discussion less commonly alluded to, to which I want to refer. I have hopes that every state tax official here will become an ardent advocate of this federal constitutional amendment, for the reasons to which I have alluded and because I think this exemption creates a grave social problem.

I want to say to you state tax officials that I think there is one feature of this campaign against the tax-exempt bond which is unfair and more or less untrue, and I for one want to refute it, and that argument is this: federal officials are very fond of stating, and corporation officials are very fond of stating, that the tax-exempt feature has greatly stimulated public borrowing, and they have intimated that the cities and counties and states of this country have, since the cessation of the war—largely by reason of their ability to borrow at low rates—gone into a period of debauch—of borrowing and spending money like drunken sailors. I don't believe in any such nonsense. I don't believe that the cities and states of this country are borrowing money merely because they can

borrow it a little more cheaply. As a matter of fact, the explanation of the enormous output of municipal and state securities after the war is the simple fact that the states and cities of this country had, like patriotic organizations, left off all their development work during the war; roads and schools and institution after institution were in bad shape, and they needed money, and they went out and borrowed it, just like the industries of this country did. That one particular argument I have personally no patience with, and it is not necessary to the making of an absolutely convincing case for the desirability of passing this constitutional amendment.

Now, I have only one other aspect of the subject, which I say is an aspect not so frequently referred to, that I want to mention. The amendment which has been proposed, the resolution which has been introduced and which has been referred to, strikes me as most eminently fair. It seems to me to be a gentleman's proposition. It extends to the states all the powers which the federal government asks, and it keeps entire faith with the taxpayers of this country, by not attempting to remove the exemption under which the vast volume of tax-exempt securities was sold. I think that is right. I don't believe that we could have removed that exemption, and it is absolutely necessary to retain it for reasons of fairness and good policy. The states and the federal government should be put upon an equal footing in this regard, namely; that after the passage of the amendment the states shall have the power to tax federal issues and the federal government shall have the power to tax state and municipal issues.

But, there are fifteen billions or more of tax-free securities outstanding. This is the last aspect of the problem to which I want to refer: Until they are retired, or for fifteen or twenty years or so, we must labor under the disadvantage of having outstanding all the time this enormous volume of securities which anybody can buy at any time, thus securing tax exemption. I personally am not so certain that there is any sound or equitable reason why for fifteen or twenty or twenty-five years we should endure this evil, which is just as large an evil now as it will be twenty-five years from now. I believe that in addition to the prompt adoption of this constitutional amendment, very serious thought should be given to the question of whether now, at the present time, by an exercise of legal ingenuity, we may not devise ways and means of overcoming this disadvantage.

A Voice (interrupting): How about changing the terms of a contract?

Professor Adams: I don't want to change the terms of the contract. A violation of good faith, sir, is just as obnoxious to me as it is to you. I would not want to remove one scintilla of the

exemption which has been given. The holders of state and federal bonds have been exempted from income taxes, but there are methods which are absolutely free from the slightest taint of violation of good faith. I mention one of them merely. Its possibilities grow with me every day, not only from this standpoint, but from other standpoints. That is the substitution for our graduated income tax of a graduated tax on expenditure, taking the place of our federal sur-taxes. Now stop, some of you, and very seriously, from day to day, for the next six months or so, consider the possibilities of that. You would have a tax that would absolutely be exempting, for instance, the saved income; you would be stimulating thrift; you would have a tax indirectly and in essence, but not in any literal sense, that would be applicable to the interest from state and municipal bonds when it was spent. There would not be the slightest violation of good faith. I mention this as simply one expedient. I could mention five or six other expedients by which indirectly we could get some income from the people who hold exempt bonds. For instance, one method is this: you all know that the corporation excise tax, adopted in 1909, and approved by unanimous vote of the supreme court of the United States, applied to and was measured by the entire income of corporations, including all interest from municipal bonds. There is much possibility in the adoption of excise taxes. The point I want to make is this: let us get that amendment; let us protect the next generation from the evil under which we suffer; and then also let us give serious thought to the question of whether by the adoption of taxes on expenditure or by excise taxes, we cannot legitimately—because we don't want to even consider anything we cannot do legitimately—whether we cannot, without violation of good faith—because we don't want to consider anything else—levy other kinds of taxes perhaps that will meet this particular evil.

Captain W. P. White: I should like to ask Mr. Adams a question.

Chairman Roberson: Due to the fact that we are very much pressed for time, the chair is going to be forced to defer for a few moments recognition of those who probably have questions on the tip of the tongue. We all know that whenever you exempt one species of property, in the final analysis the man who owns real estate is going to have to carry that extra burden. It seems particularly fitting that we have with us tonight a man who is in a position to speak with knowledge and authority for the farmers and the real estate owners of this country. We have with us this evening Mr. H. C. McKenzie of the American Farm Bureau Association, and I am going to ask him to say a few words to us on this matter of tax-exempt securities.

MR. H. C. MCKENZIE: Mr. Chairman and ladies and gentlemen of the convention: After the very careful summary that was given by our president in the matter of tax-free securities and the splendid address that we have had from the official adviser of the government on taxation, it would be utterly foolish for me to undertake to instruct this body on the plain questions that have been discussed here tonight.

There are, however, just two or three things that I want to say to you, and the first one is that the organization which I represent, the American Farm Bureau Federation, is in entire sympathy with the position that has been outlined by President Lord and by Dr. Adams here tonight. We recognize the evils that are involved in this constant flood of tax-free securities. A man whom I consider the best posted senator in Washington made the assertion a year and a half ago that at that time men with incomes of three hundred thousand dollars and up had already two-thirds of their investments in tax-free securities. Dr. Adams has told you that there are at least fifteen billions of dollars of tax-free securities. Dr. Seligman of Columbia University, I understand, figuring in a little different way and figuring government securities that are not taxable by the states, has just about doubled that sum.

If you add to the amount of tax-free securities the amount of intangible property that is escaping taxation, the amount of tangible property that is escaping taxation, and then the amount of real property that is not being taxed, which in the State of New York amounts to twenty-two per cent and a little more of the total real estate, you have piled up an amount of property which is greater, as I figure, than all the taxable farm property in the United States.

Now, that being the case, what is the result? Those of you who are living on farms in the mid-west or any other part of this country know that the tax base has been so narrowed in this country that the tax burden on real property—on farms—has become almost intolerable, and that unless that condition can be remedied, and this issuing of tax-free securities and the exemption of property stopped, we are coming to a place where we are going to be in very serious difficulty.

When I appeared before the ways and means committee in Washington a while ago, one of the questions that was asked me in regard to this tax-free security matter was, how many of the states will ratify an amendment if it is passed by Congress? Of course that was a question that I was not able to answer. The only thing I could say to those gentlemen was this, that if you will pass the amendment, we can assure you that the farm organizations will use all the power at their disposal to see that the amendment is ratified by the states. And that brings me to the chief point

that I want to make before this audience here tonight, and it is the one to which Dr. Adams alluded, and that is, that you tax men, the chiefs of the tax departments in your various states, can be a power in bringing about the passage of the proposed amendment by Congress. If they are convinced at Washington that the states really desire this thing, it is going to make the passage of the proposed amendment very easy, and as I see the whole situation, it resolves itself very largely into a question of educating our people back home. When we can educate the man in the city and the man in the country to the fact that we are losing more than we are gaining by tax-free securities; when we can show to the man of wealth that he is laying up trouble for the future, we are going to have a very much easier time with the men in Congress than we have had heretofore. That is one thing I want to impress on this audience, that, as you have opportunities, you impress upon the men in your various legislatures the point that the issuing of tax-free securities is going eventually to wreck any equitable tax system that we can devise in the United States if it is continued. I thank you.

Chairman Roberson: The chair is going to call on one other speaker on the regular program for a five-minute discussion, and then it will be my pleasure to recognize the gentleman on my left here to whom I refused recognition a few moments ago. We should like to have Mr. Doyle of the real estate board of New York City discuss this matter for five minutes.

Mr. Edward P. Doyle of New York: Mr. Chairman and gentlemen: Up to 1916, building in New York City was financed almost entirely by loans from individuals or from large firms of attorneys having the care of estates or acting for guardians. After the beginning of the war, at a time when the housing shortage was so acute in New York City, both as to dwellings and offices, and when the government began the imposition of high taxes and the issuance of tax-exempt securities, we found it impossible to borrow any more money from estates or from attorneys, and whereas, before 1915, when all the large buildings in New York were financed at a rate of interest not exceeding four and one-half per cent and private dwellings not exceeding five per cent, we were obliged to finance our large buildings by concerns issuing mortgage certificates, which, as you know, loan nine hundred thousand dollars on a one-million-dollar mortgage, and charge six per cent in addition to a very large covering charge for expenses. Now, all the large buildings erected recently in New York City were financed in that way, and after the deflation which must come, they will have to compete with buildings financed at four and one-half per cent and five per cent—built five or six or seven or eight years ago. The

issuance of tax-exempt securities and the imposition of the large sur-taxes by the government, drove mortgage money entirely out of the market. One of the largest loaners of money was a resident of Texas. I think he had nearly six millions of dollars in New York mortgages, but he found that after he paid the government taxes, they netted him only about one and one-half per cent, and he sold all his mortgages and purchased tax-exempt securities. Now, that is one of the things that has injured real estate in the City of New York—the issuance of tax-exempt securities.

The other is the tendency toward municipal extravagance. I listened to what the gentleman said about there being no tendency toward extravagance in municipal governments. Economy is not popular in municipal governments; economy is not popular in cities. In the Borough of Manhattan, where only two per cent of the population are property owners, or in the Borough of Bronx, where only eight per cent are property owners, or in the Borough of Brooklyn, where only nineteen per cent are property owners, economy is not popular. It requires all the effort of organizations like the one I represent to prevent the most tremendous expenditure of money for public improvements, because the improvements are popular with the people, and there are not enough taxpayers to have any effect. There are only 150,000 property owners within the six millions of people in the City of New York. In every municipality with which I have had anything to do, there is always a corps of engineers anxious to do work, anxious to keep, as they call it, their staff employed; and back of them and urging them all the time are contractors, and back of the contractors are the politicians. I had an invitation the other day to attend a luncheon at the chamber of commerce and I found there a large number of the most prominent men in New York City, the president of the metropolitan life, the president of the mutual life, the president of the chamber of commerce. They were listening to a number of engineers who were urging the building of a new system of sewers, costing two hundred millions of dollars in the borough of Manhattan alone. They wanted us to subscribe twenty-five thousand dollars to start propaganda to urge the board of estimates to make the necessary appropriation and to start the work. I told them, of course, that it was not necessary to spend any money for propaganda, that the board of estimate had authorized all manner of work and improvements during the past three or four years, with cement four dollars a barrel and ordinary unskilled labor eight dollars a day.

The ability to issue tax-exempt securities has stimulated every school district, every township and every county in my state, and every city, and then, on account of the fear of unemployment, they have been urged by the government to make public improvements,

causing an enormous issue of tax-exempt securities. Here is the thing: You read in the newspaper every day these headlines: Progressives victorious! Old Guard defeated! Reactionaries go down in defeat! These progressive platforms — and I have read every one of them—call for the nationalization of transportation lines and mines; the municipalization of public utilities, and for what that means. There are eleven billions of dollars worth of public utilities in the United States. If they are municipalized, tax-exempt securities will be issued against them and probably taken out of the state; if they take over the mines and transportation lines it will require thirty billions of tax-exempt securities, and in a short time you will have more than half the tangible wealth of the United States in tax-exempt securities, and you will have only two classes of people in the United States, the very rich, who will buy the tax-exempt securities, and the very poor, who will be treated as the free citizens of Rome were, and the free citizens of all the old progressive cities of antiquity, and the middle class will be wiped out. If you are going to have all those platforms — the recall of judges, the recall of public officials, free wine, free oil, free doctors, free milk and free dentists; two more cabinet officers, notwithstanding that there are fourteen hundred bureaus now in Washington; more bureaus to interfere with every activity of our business or our individual lives—and if all that is to be done with tax-exempt securities, purchased by the rich, because that takes them out of the taxable class, you will have the middle class like ourselves, the owners of small houses and farmers, taxed out of existence, and only two classes in the United States, the very rich and the very poor.

Chairman Roberson: The chair got along all right until you got down to that free wine business. The gentleman to my left rose for recognition a few moments ago. I should be glad to recognize him.

Judge Charles D. Rosa of Wisconsin: I arise to ask somebody this question about the proposed constitutional amendment: As I heard it read, the thought occurred to me, does it grant Congress any power that Congress does not have at the present time, and does it raise any prohibition against congressional action that is not raised at the present time?

Professor Adams: That question is well settled, and I think all the lawyers agree that by decisions of the supreme court, particularly in the Evans case, it is made almost utterly certain that Congress cannot tax by direct income tax the income derived from state and municipal bonds, and reciprocally the states cannot tax the income derived from federal bonds, under existing law.

Judge Rosa: Grant that then, Professor; how does your constitutional amendment give them that authority?

PROFESSOR ADAMS: Let us read the amendment. I think that does that rather plainly.

(Reads the following amendment—H. J. R. 314; R. 969)

"SECTION 1. The United States shall have power to lay and collect taxes on income derived from securities issued, after the ratification of this article, by or under the authority of any State, but without discrimination against income derived from such securities and in favor of income derived from securities issued, after the ratification of this article, by or under the authority of the United States or any other State.

"SEC. 2. Each State shall have power to lay and collect taxes on income derived by its residents from securities issued, after the ratification of this article, by or under the authority of the United States; but without discrimination against income derived from such securities and in favor of income derived from securities issued, after the ratification of this article, by or under the authority of such State."

JUDGE ROSA: That answers my question.

PROFESSOR ADAMS: While I am on my feet, may I say a word in defense of my statement to the effect that I did not believe that the mere fact that states and cities were empowered to borrow at slightly lower rates than industrial enterprises—that that differential in rates had stimulated public extravagance. I want to repeat that statement, despite all the gentleman said. There is natural extravagance in government, and I have seen a great deal of it, and all of us have seen it. That extravagance, however, in my opinion, is not greatly or materially promoted by this ability to borrow easier. I want to say one other thing while I am on my feet; I personally am getting tired, and I am getting good and tired, of hearing representatives of corporations and of business enterprises and of private undertakings, who literally float in luxury, whose men smoke twenty-five cent cigars, and walk over velvet carpets, and indulge in every evidence of luxury—I personally indulge to the extent of my income every day, in smoking cigars and riding in Pullman and chair cars, when I could ride in other cars—continually harping upon the extravagance of our government. It makes me considerably tired, and I want to call your attention to a few facts. I had occasion a year or so ago to go through the statistics of the municipal and state expenditures of this nation in the last ten years. Two or three generalized facts emerged from that which opened my eyes and made me speak a little more hesitantly and a little more carefully about the states and cities of this country than I had been accustomed to speak in the past. One of those facts was this, that in the first place the state, city and municipal governments — the federal government so far as that went — let their equipment run down tremendously during the war — school supplies and school buildings—school teachers were underpaid; the expenditure for all government work fell off tremendously in all

sections of the government. You can find that verified in the very striking figures given by Mr. Rosa, in an analysis of expenditures of state and federal governments and municipal governments for the last ten years or so. Secondly, the state governments of this country during the period of the war actually raised more money by taxes than they spent; in other words, there was a net reduction, if anything, in the indebtedness during the war. They were not only raising everything that they were spending by taxes, but in that period of trial and hardship they raised more and extinguished part of their debt. The municipalities of this country, during that period raised by taxes a very much larger proportion of revenues than they had ever done before. Lastly, and bearing upon the assertion about the increase of public activity, the proportion in the cities—they are not obtainable for the states, but the matter is not important there—the proportion of expenditure by our municipalities for public enterprises—those things we call socialistic enterprises—is diminishing and not increasing. I am convinced of that. This talk about the increase of socialism is to my mind a kind of a bogey. Actually speaking, the expenditures in revenue for such things as municipal gas plants and street railways is a smaller proportion of the expenditures of city governments now than it was ten years ago. As a matter of fact, what I have said is true, the states and cities of this country let their plants, their roads, their streets, their schools, run down during the war, and at the conclusion of the war they borrowed rather more than I should have liked to see them borrow; there has been each year more borrowing than I should have liked to see. But every man and woman spends more than they ought to spend. Why do we wear two-dollar neckties? Why do we smoke twenty-five cent cigars? Why do we run to the movies?

A Voice: We don't.

Professor Adams: But we do.

Chairman Roberson: May I say this, since it is now twenty minutes past ten; you know it is about the seventh inning of this ball game. If you all stand up about two seconds, you will feel better. It is getting near time for adjournment, and I am going to insist that we stay within the five-minute rule.

Captain White: I am one of the few members of the National Tax Association who is not either an economist or a tax assessor, or something of that kind. I am a taxpayer. I happen also to have been a government official, so that I know something about government expenditures. We have the question of tax-exempt securities, and there seems to me to be some misapprehension in regard to them. They are variously estimated by people who ap-

peared before the congressional committee at anywhere between eight billion and eighteen billion. That is a wide margin for tax-exempt securities. I recognize that men who have great wealth, and who feel that the government is taking unfair advantage of its taxing ability, in destroying that wealth, naturally will seek some outlet for at least part of that wealth, so that it may be saved from spoliation.

We are taking money by due process of law, but it is a law that has never before been enacted in America. Heretofore, we have always been fair in our taxation; everybody stood on his own bottom. We had a tax levy on property; it did not make any difference whether it was a one-thousand-dollar house or a ten-thousand-dollar house, the rate was the same, and I see no difference between one form of property and another; but by means of socialistic propaganda we have inaugurated a system of taxation that is essentially un-American. It was not inaugurated for the purposes of taxation; it was inaugurated for the purpose of destroying great wealth, and I am glad to see that Professor Adams has confessed as much. When we start out with a basis of that kind, we know where we are at. The United States and the several states have a right to tax the income of their own issues. The State of Minnesota can tax the issues of any municipality or any county or its own state. That is its right by law. The government of the United States can tax income from its issues. The result of that particular kind of legislation during the war was that on the securities of the United States, the rate of interest had to be increasingly raised, so as to make a ready market for them, and then the market was not met in an economic sense. It was met because the people were patriotic and took what bonds they could buy. As a result, however, of that particular kind of financing, the government issues after the war went down below par, and the individuals who had a small investment and who wanted money, sold their bonds at a loss. A lot of them had sense to hold on to them, and they are now back to par; but that was due to the condition of business; that practically during the last two years investments in large corporations have stopped. We were in a period of deflation; business has been on the toboggan; business had already all the money it could borrow invested, and it had to take care of the interest on the bonds already made, so that there was not a ready market for the moneys coming from securities. The outlet would naturally be towards tax-exempt securities.

There is a phase of tax-exempt securities that has escaped the minds of people talking about them, and that is the readiness with which those tax-exempt securities can be used for collateral, and for business purposes, so that money can be readily obtained when it is necessary. The rich men of the United States are not the

only investors in tax-exempt securities. Our insurance companies and banks and others are purchasing tax-exempt securities, because there is a ready market for them, and their demand for money is not constant. Insurance companies, particularly, keep their reserves in something that can be readily sold and will not depreciate during the course of time. Those things ought to be carried in mind when we are talking about tax-exempt securities. It is also said that the government of the United States loses more income than it gains from tax-exempt securities, but how about the state whose tax-exempt securities are marketed in New York? What will be the effect upon the taxpayers of Minnesota when it goes out to borrow, if it cannot borrow at four or four and one-half or five per cent, and has to borrow on the same basis with these preferred securities we have been floating on the market, at seven and eight per cent. They have got to have the money for certain improvements, and it does not make any difference so far as the tax rate is concerned. If the necessity is great enough they are going to float the issue. We spent about two million dollars for a high school in Lowell immediately after the war. We should have spent it anyhow, whether the rate was four per cent or eight per cent. I think you better carry those things in your mind when you talk about legislation that will alter the Constitution of the United States. Let us work a while under the old Constitution and see if there isn't another solution.

Mr. C. J. Buell of Minnesota: It seems to me not to be quite fair to allow one side of this question to have all the evening and the other side to be forced to be content with five or ten minutes. I will confine myself to five minutes.

Chairman Roberson: Which side do you wish to address us on?

Mr. Buell: The other side. I agree with so much that Mr. Lord says, and he and I are such agreers, generally, that perhaps I can disagree on a few things. As to Mr. Harding, I don't agree with much of anything he does.

Chairman Roberson: You cannot get into a dispute with the chair on that.

Mr. Buell: Here are one or two points that it seems to me have not been gone into quite enough by these gentlemen who are going to rip things up. In the first place, you cannot touch these fifteen or thirty billions already invested in existing tax-exempt securities. They are there to stay. Mr. Adams admits that you cannot touch them, so that when you undertake to issue any more securities that are not exempt from taxation you undoubtedly will have to pay a considerably higher rate of interest. Now, I want to show you who will get hurt by that. I don't need to say a word on that;

every one of you knows who will get hurt when your securities have to bear a higher rate of interest. You know that when your securities are taxable they cannot be issued at as low a rate of interest; and you know you don't hurt the fat boy at all when you issue securities at a higher rate of interest; you don't get the enormously rich fellow that you think you are after. He will buy your securities at a higher rate of interest; he will pay the tax that you levy on him, and he will make just as big a profit out of it as he does now. If he don't, he won't buy your securities; you cannot make any law to compel him to buy them. Now, that will all fall back upon the common taxpayer. Some of you gentlemen insist that the common taxpayer is in every case the ultimate consumer, and the ultimate consumer is usually poor, so that your scheme is a scheme that won't hurt the enormously rich; it will hurt the poor.

I should like to make a suggestion which in my opinion would help this matter out somewhat. I don't know what Mr. Doyle meant by the enormous cost of those sewers he was talking about. My understanding is that the City of New York taxes the cost of sewers against the benefitted property owners, and if they do, they don't issue bonds to pay; the benefited property owner pays the bill finally. Personally I am utterly against municipal bonds of any kind, and have been for forty years. I don't believe there is ever a necessity for the issuing of municipal bonds for any purpose whatever, unless it may be these revolving bonds that are to be paid for as the benefitted property owners pay in their assessments. That may be an easy way of getting it; and here is your illustration: There isn't a municipal public work of any kind, school house or sewer or pavement or water main or anything else ever put in that was needed, that didn't create a value equal to its cost. All you have to do is to find out where that value rests and take that value for the thing that creates it, just as you do with your sewers and water mains, and with building school houses. We have a provision in our charter that we could assess the cost of a school house in Randall Heights against the benefitted lot owners in that district. The minute that school house was proposed to be built, lots all through that district more than doubled in value, and the people who had to purchase them to build homes on after the school house was located there had to pay more than double the sum they had to pay before. The City of St. Paul did not avail itself of that provision of its charter. It built the school house by issuing bonds. The lot owners got the benefit and the people finally paid the bill. The City of San Francisco was wiser; the City of San Francisco owns a street car system. The City of San Francisco built a four-million-dollar extension to its street car system. I was told that the people wanted underground stations and elevators, to take the people up to the surface, and that the

benefited property owners wanted that system, and went to the city authorities and urged them to build that extension and to assess the cost against the benefited lot owners — the owners whose lots were going to be brought within fifteen minutes of the center of the city but which were then forty-eight, fifty-five and sixty minutes from the city. The four-million-dollar extension was put in; the benefited lot owners paid every cent of the four million dollars for that extension. The city owns it. The people who paid for it were willing to pay for it; gladly paid for it, and the taxpayers will never have to pay that four million dollars. There is something to think about.

JUDGE W. A. HOUGH of Indiana: Ladies and gentlemen, the proposition that is before this conference for decision is whether or not to support this joint resolution. This resolution applies only to states that now have an income tax. A majority of the states do not have any income tax and could reap no benefit whatever from the passage of this joint resolution and a change in the Constitution. If it became a law, in the State of Indiana we could not levy any income tax upon government bonds, because we cannot levy an income tax on income arising from any class of property; and it seems to me that in the shape it is in, it is utterly unworkable, will be impracticable and will be rejected without any question whatever by the states.

I want to say this: I have been delivering addresses for more than a year on tax-exempt property — not tax-exempt securities alone, but on all tax-exempt property—and I do not believe that there is any justifiable ground for exempting any property of any character from taxation unless it is devoted absolutely to some public use, and I think that ought to be the law not only in the United States, but in every state in the Union. We are in a position where we cannot have laws of that kind. It must be a matter of evolution and development. Tax-exempt property must be gradually stricken out of our laws in the states and in the United States. We must not lose sight of the fact that within the next six years this government must refund more than ten billions of dollars of its present debt. Nobody can figure that the outstanding present tax-exempt securities can be less than thirty billions of dollars. There are more than eighteen billions of government bonds alone, and in addition there is the enormous indebtedness of the municipalities and the states throughout the Union which have been issuing bonds from day to day; and, notwithstanding the astonishing statement of Professor Adams, more than doubling their indebtedness since the war began.

In Marion County, down in our state the indebtedness was something like twelve million dollars in 1916. It is now more than twenty-seven millions of dollars. There isn't a single taxing unit

in our state that has not increased its indebtedness by the issue of these bonds and, gentlemen of the convention, I am more than astounded to hear Professor Adams stand up before you and say that he is getting tired of the talk of extravagance on the part of public officials. There are a class of men who are in favor of hunting for new classes of property to tax all the time, and who do not seem to regard the fundamental question of the reduction of expenses as the keynote to the whole business. We have got a way to do it in our state, and I want to tell you two instances—concrete instances—of how we control the extravagance of local officers. In Allen County they had placed before our board, for our approval, a bond issue of five hundred and seventy-five thousand dollars for the purpose of constructing a double course concrete road. The contract price was five hundred and sixty-three thousand one hundred and ninety dollars. Upon the petition of ten taxpayers a review of the determination of any local board for the issuance of bonds may be brought before the state board of tax commissioners, and we have the authority, under the law, to deny the issuance of bonds. Now then, this particular case happened to be in my part of the state, and I went down there and had a hearing before the taxpayers; there was a petition filed with 1435 names on it—bankers, lawyers, farmers, business men—all asking that these bonds be issued and this road be constructed. I said at about noon, after we had been all morning on the hearing, "Gentlemen, this road is costing more than fifteen thousand dollars more per mile than a road which is under construction at this time in Madison County, with the very same plans and specifications, and we cannot authorize the issue of these bonds. It is useless to proceed with the hearing." They asked me to stay there until the afternoon, and at three o'clock in the afternoon the contractors came in and offered to knock one hundred and thirty-one thousand dollars off the contract price, if we would authorize the bonds. I said it was not enough. They argued with me and with our commission, and they sent a dozen lawyers down there to try to get us to authorize those bonds, but we thought the price was too high, and we thought besides that that we had no authority to fix the contract price on any road, that it must be done by competitive bidding. We directed the county commissioners to deny the bid, and the contractors brought suit to enjoin the receipt of new bids, but the court dissolved the temporary injunction. They received the new bids, they let the contract to build that same road, without a solitary change in the plans and specifications, for three hundred and sixty-two thousand dollars, two hundred and one thousand dollars less than the contract price, after it had been passed by the county commissioners, the county engineer, the county counsel, and the petition signed by fourteen hundred taxpayers.

Now, Professor Adams says that because a man smokes a twenty-five cent cigar, and wears a necktie, he cannot come in and object to the extravagance of these officers who are spending your money. It is none of his business, and it is none of my business if you smoke a twenty-five cent cigar or buy a Pierce-Arrow automobile; but it is your business and it is my business when the local officers spend our money for taxes; and there is only one way in God's world to reach this tax question, and that is to cut down these extravagant expenditures that are being made in every city and in every county and in every township in the United States. There has been an insane orgy of spending public moneys, and it is going on today. The instance I have given you here is only one out of more than a hundred where we have cut down the prices of school houses and roads. In addition to that we can go right into a tax levy, upon the petition of ten taxpayers, and we can cut the budgets down to where they really ought to be. We took six hundred thousand dollars out of the budget of the City of Indianapolis last year, and they never missed one single dollar. They carried on their city and saved that six hundred thousand dollars for the taxpayers. It is by attention to expenditures of public money that the only sound and safe solution of the taxing problem can be found. I thank you.

CAPTAIN WHITE: The gentleman who is representing the farm bureau spoke about the taxes that the farmers have to pay. I should like to ask him what the taxes on real estate that the farmers paid amounts to.

MR. MCKENZIE: I think I can, fortunately, answer that question. Taxes on real estate are the local taxes. If you will study the report gotten out by the gentleman who addressed us this morning, you will find in that report that the tax on real estate in the State of New York on equalized valuation amounts to two and one-half per cent or better. Now, that is where the bulk of the tax on real estate goes.

CAPTAIN WHITE: Goes to the county?

MR. MCKENZIE: Not all to the county; part of it goes for the support of schools, part of it for the support of roads and for the other local expenses.

CAPTAIN WHITE: All local expenses. Then I ask the gentleman, how does he come here and argue against tax-exempt securities so as to save the farmer his local taxes?

MR. MCKENZIE: The gentleman seems to forget that the farmer not only pays local taxes but, if he is so fortunate as to get into the class of income taxpayers, he also pays that. Here is the fact: If you divide our total tax burden up between federal taxes and

state and local taxes, you will find in the State of New York, for instance, that it is nearly a fifty-fifty proposition, about half for national purposes and half for local and state. In that state probably only about twenty per cent goes for state purposes and the balance goes for the local purposes, to which I have called your attention. We are all living in one country and when the property owners have to pay the bulk of the cost of running the local government, they are paying probably forty per cent of the entire tax bill of the country.

CHAIRMAN ROBERSON: I recognize Mr. Rothschild.

MR. M. D. ROTHSCHILD of New York: I just want to say a word on the question of tax-exempt securities. I am fully in harmony with Mr. Lord's recommendations and I believe for future purposes that the proposed amendment would be a very good addition to our Constitution, but we have with us this body of tax-exempt securities, which has been estimated at anywhere from fifteen to thirty billions of dollars. Fifteen billions of dollars is in itself a sufficiently large sum to very greatly affect the interests of the country, of commerce especially, and the exemption from tax of a part of our population—the very part of the population which ought to bear the full share of taxes—is, I take it, not a very desirable thing. Now these men who invest in tax-free securities instead of investing in regular securities, that is, preferred stocks and bonds, that are not of strictly high grade but which would bring them a reasonable return for the money, would cease these tax-free investments if they no longer paid; in other words, if they did not feel they were in a position where it was necessary to get ten or twelve per cent in order to get as much net as they can today on a tax-free five per cent bond. They way to cure this, I take it, is to bring those people back into the tax fold once more, and to so arrange the surtax on personal incomes that it will not pay a man to buy tax-free securities to escape taxation. You don't get anything by it anyhow, and I take it if those surtaxes were so arranged that the average tax of no man would be more than twenty-five per cent—that is, the lower taxes, and the higher taxes averaging to twenty-five per cent—he would be in a position where a seven per cent preferred stock, with a twenty-five per cent obligation to the government, would still leave five and one-quarter per cent. I am quite sure that the average man, not perhaps a few very timid people, but the average man in business would rather take the five and one-half or six per cent, or a little better investment and let the tax-free security go, than to hold on to it. That I take it is the practical solution, and if the people in this country, who are attempting class legislation at all times — who believe that a few people should pay the bulk of the taxes, because they happen to have

the money—if they would get a little sense and get the money where they can, and not build up this class of tax-free citizens, we should all be better off, and this question of tax-free securities would once more sink to where it was a few years ago. They would be the investment of conservative estates, temporary investments for insurance companies, and people who wanted to put their money where they could readily get it out again. It would not be used as an immense reservoir for money which ought to be in use in commerce.

Mr. J. L. Sayler of Illinois: There is one question that has occurred to me in listening to this resolution tonight. Under the law, as it stands in this country at this time, and I think it is based on a decision of the United States Supreme Court in the Minnesota case, a state government has not the right to tax the securities of a territorial government, either the main government or the municipalities or smaller subdivisions under it. Under this resolution as it is written, apparently, a state, if it had an income tax that taxed its own securities, would also have the right to tax the securities of the United States Government; but there still remains a question whether it could tax the securities of the Philippine Islands or Manila, or the subdivisions thereof. That is a point that I think should be cleared up.

Captain White: How about the securities of another state?

Mr. Sayler: Well, one state has the right to tax the securities of another state, that is, they may exempt them or may not, as they see fit, but in a territorial organization they cannot There is one other phase, and that is on this question of surtaxes. In considering the question of the point where an investor will forsake ordinary corporation issues and go over to tax-exempt securities, it is the application of the normal and surtaxes that determine it. If you take, for instance, a case where an investor has an income so that his total normal and surtax rates would be thirty per cent; take his one thousand dollar taxable bond at seven per cent; the income from that one thousand dollar bond would be seventy dollars; if you apply a thirty per cent rate to that, the tax would be twenty-one dollars; subtract twenty-one dollars and you get a forty-nine dollar yield; that is, forty-nine dollars net; and that is what determines where an investor would go over to the tax-exempt securities. If you get down to principle; if this income tax principle is correct as applied either to state or nation, then it should go to its logical conclusion, and that is that every bit of a man's income that is in a true sense profit or income in the popular sense of the word, should be included in the base to which the tax is applied. There again you get over to the fact that if the tax-exempt securities are brought under this rule, the result is going

to be a lessening of the higher surtax rates and there is the point; the moment you get an investor with taxes so high that he can go over into other forms of securities, or resort to methods under which he will have no tax to pay, that moment the tax is not going to be effective. Therefore, in the consideration of the principles here, you have to consider the demands of industrials and of the public utility field for money, and that the moment you drive out capital, that moment you are going to make it more difficult for the people to borrow the money. It finds expression in the fact that whereas in other days the average investment bonds would be sold, for instance, in fifty thousand and one hundred thousand dollar lots, now you have to seek the small investor, and it has even got to the point that the bond houses find it profitable to sell on the partial payment plan. Furthermore, it has enormously increased the expenses of the industrials and public utilities and other concerns in floating their bond issues. The whole thing is wrapped up in this question, that if there are people who are entitled to special concideration, let them be given consideration in some direct method and not resort to a tax-exempting feature in order to give it to them.

Mr. John E. Brindley of Iowa: I want to make just a remark or two, and that is to correct what seems to my mind to be a wrong impression in the minds of some of the delegates here, arising from some remarks made here in the course of this rather heated discussion. I merely want to state that over a number of years I have attended this conference, and there has been no member of it in season and out of season who has used his influence in favor of greater and greater economy in public expenditures than has been the case with Professor Adams, and I want to make that remark because I observe that perhaps a wrong impression was obtained by one of the speakers. I think we all will admit that.

Mr. Doyle of New York (interrupting): I should like to say—

Chairman Roberson: Will you let me finish my statement?

Mr. Doyle: Yes.

Chairman Roberson: I said that under the rules of the conference no gentleman can have the floor twice until all those desiring to be heard have spoken; and I recognize Mr. Query.

Mr. W. J. Query of South Carolina: The resolutions committee has been called to meet immediately after this conference has adjourned, and I move you that if all those who have desired to speak have spoken, this conference adjourn until ten o'clock in the morning, so that the committee on resolutions may convene.

Professor Adams: I want to second Mr. Doyle's proposition, that he have full opportunity to get back. It seems to me quite fair.

CHAIRMAN ROBERSON: Under strictly parliamentary rules, of course the motion to adjourn is not subject to discussion.

MR. DOYLE: I don't think it is fair. A government official charges that there is no extravagance in government, and he spoke twice too, and I want to show how the budget of the State of New York has constantly increased. From 1900 it went—

CHAIRMAN ROBERSON: Just a moment; there is a motion to adjourn before the conference. In view of that motion, your discussion is out of order.

MR. QUERY: I withdraw the motion for adjournment.

CHAIRMAN ROBERSON: All right.

MR. DOYLE: Up to 1900 the expenses of running the State of New York—the state budget—never exceeded fifteen millions. In 1900 the budget of the City of New York was just one hundred millions of dollars; last year the budget was three hundred and fifty millions, six hundred and thirty thousand dollars. This year the departments are asking for four hundred millions of dollars, and you all know what has happened as far as the federal government is concerned; the expenses have doubled and tripled and quadrupled. Now, it is idle for anybody—even so distinguished an expert as the gentleman who spoke—to say that there has not been a tremendous increase in the expenses of the governments.

The primary object of all government—and for that reason governments exist among men — is to protect men in the pursuit of their daily vocations, but until recently a union card was more protection than the protection of government. All the other functions of government are surplusage and should be wisely studied and considered before they are adopted. Any new power or function of government ought to be very carefully considered before it is adopted; and yet every new source of revenue, gentlemen, all the new taxes put upon every one of you, in every state of the Union, has been immediately swallowed up by some new function of government, and you all know it.

JUDGE HOUGH of Indiana: You have no right to kick; you wear a necktie.

MR. DOYLE: But I don't smoke.

MR. QUERY: I move we adjourn.

CHAIRMAN ROBERSON: All those favoring adjournment say aye.

(Ayes and noes)

Adjournment to Thursday, September 21, 1922, at 10:00 o'clock A. M.

(Adjournment)

EIGHTH SESSION

THURSDAY MORNING, SEPTEMBER 21, 1922

CHAIRMAN LORD: The conference will be in order. There are several resolutions which the authors desire to have read and referred to the resolutions committee.

(Reading of resolutions)

Are there any local announcements, Mr. Moffett?

MR. C. T. MOFFETT: Yes, Mr. Chairman. At 12:15 today, at Donaldson's Tea Room, the Minneapolis real estate board invites you all to be their guests. That will follow just after the close of this session. I should like to have a show of hands of those who will attend.

CHAIRMAN LORD: I hope there will be a full attendance.

ROBERT MURRAY HAIG: In view of the fact that a rule has been adopted by the conference to the effect that resolutions should be referred to the committee by this evening, in spite of the fact that the session which is to be devoted to public expenditures is not slated until tomorrow morning, it has seemed desirable to some who are particularly interested in this program of public expenditures, that it might be well at this time to offer a resolution, to be referred to the resolutions committee, providing for the establishment of a committee of the association to study the problem of public expenditures.

The desirability of this action is somewhat accentuated by the fact that there are at work in this field already several bodies which are making a study of the problem, and who have asked the cooperation of this association in their labors. Particularly I have in mind the efforts that are being made in the field of public school finance by an organization known as the educational finance inquiry. Informal cooperation has already been brought about with a number of the members of the association, but it is desired to establish some more formal relationship.

I therefore offer this resolution which I suppose will be referred in the regular way to the resolutions committee.

(Resolution read by Mr. Haig)

CHAIRMAN LORD: The resolution will be received and referred

to the committee on resolutions. I know of no one in the United States who has done more in a constructive way in the cause of tax reform than Professor Bullock of Harvard University, and I am going to call on him to preside at this session of the conference—Dr. Bullock.

Charles J. Bullock presiding. Members of the tax association, ladies and gentlemen: We have no formal program this morning, and until I arrived in town I did not know that I was to preside at this session. In view of all the conditions that have developed, it seems to me that it will perhaps be wise to conduct this session as a round table. That means that after calling upon a few speakers, to discuss, rather briefly, some aspects of these subjects that are listed as the subjects for the morning, we shall throw the meeting open to general discussion and questions.

Of course, it is evident to you that the subjects here listed relate more or less closely to the plan for a model system of state and local taxation, recommended by the committee appointed by this association. As the chairman of that committee I should like to make one or two introductory statements before the discussion begins.

The first is, that we did not take up that plan of a model system of state and local taxation until this association was nine years old, and was entering upon its tenth year, and until there developed among the members a very well-defined demand that the association do something to give articulate expression to the ideas of income and classified property and business taxation, and perhaps other things that had been engaging our attention at nine successive conferences.

The committee did not seek this job; the officers of the association did not propose to appoint the committee; it was appointed in response to a spontaneous demand developed at the Indianapolis conference in 1916, that something be done to bring to a head all these things that we have been discussing year after year at our annual meetings.

In the next place the committee when appointed did not undertake to commit the association or commit any member, to the result of its deliberations. All we did was to print and circulate a tentative plan, which you have had before you as a subject of discussion at successive conferences. That plan was printed in the winter or early spring of 1919, and considered at the Chicago conference.

In 1920 there came another demand, at this time from state officials, whose legislatures were going to meet in the following winter, for drafts of bills carrying out the suggestions made by the committee about personal income taxes and business income taxes, and therefore this committee, in the fall of 1920, held another pro-

longed session and drew up and submitted to you a couple of bills. Those bills again were tentative; they were imperfect in various details; the committee did not know enough for the job. We spent a week at Buckhill Falls. There were men from all parts of the country; and we really did not get through with all the many details that had to be threshed out. We got through the important things, and then had to refer a good many details to a sub-committee that met later in New York and put us under great obligations, by getting these bills into final form.

Now, no member of the committee regards the report and the bills as necessarily a final expression of opinion. The work has been educational, as to both the members of the committee and the members of the association. Our minds have been open, and we have received during the two or three years that have passed numerous helpful suggestions, and this year in particular we have a number of helpful suggestions along the lines covered by the report.

This session of the conference will perhaps develop more fully than any we have yet had the state of mind of the members of the association, and it may prove desirable some time this winter or coming spring, before the next meeting is held, to reconvene the committee and see what changes, if any, they desire to make in these proposed bills. I make this statement in order that you may see that so far as the committee is concerned, the work of studying these problems is still going on, and that the members of the committee have no pride of authorship in anything they have published in their model report, or in their proposed income tax laws, and that they are anxious to get a general expression of opinion from all who are interested in the subject. We hope that the meeting this morning will conduce to that end.

Before throwing the meeting open to the discussion of any question, I am going to call on a few gentlemen who are in the thick of the work of administering income or classified property taxes in various states, to tell us something about the present workings of those taxes in their states, and I am going to begin first with a group of income tax states, namely, Wisconsin, New York and Massachusetts; states that have tackled this income tax proposition more seriously perhaps than any others, and have been willing to spend the money necessary to secure real administration of their income taxes.

I am going to call first upon Mr. Atwood of Wisconsin, if he is in the room, and ask him to tell us something about the Wisconsin income tax. Is Mr. Atwood present?

JUDGE ROSA of Wisconsin: Mr. Chairman, Mr. Atwood is not here.

CHAIRMAN BULLOCK: Will Mr. Strader either tell us something about the tax or suggest somebody else from Wisconsin who can.

FRANK D. STRADER of Wisconsin: Mr. Chairman, and members of the conference, ladies and gentlemen: I have been engaged by the Wisconsin tax commission since about the middle of the year 1918 in assisting in the administration of the corporation income tax law of the State of Wisconsin. I assume that the great majority of the members of this association are familiar with the Wisconsin income tax law. It does not vary in very many essentials from the model income tax law. We tax corporations and partnerships as well as individuals.

The corporation income tax law is directly under the supervision of the tax commission, and all corporation returns are filed with the commission. The personal income tax and the tax on fiduciaries and partners is under the direct supervision of forty-one assessors of incomes, who are located in the various districts and who audit the returns of individuals, partners and fiduciaries, and enter the assessments on the rolls.

The corporation returns are audited in the main office at Madison, where the assessments are made, and the tax commission makes up the assessment rolls. Both the corporation and the individual rolls are certified to the different county clerks, who in turn pass the rolls on to the local treasurers where the tax is collected. Under our system the assessment is made by the tax commission or its representatives, and the tax is collected by the local treasurers. In putting this law into effect it was not necessary to add any additional machinery for the collection of the tax. On the whole, that plan has worked out very satisfactorily.

I imagine that you are interested particularly in the problems we have to meet and how we meet them.

Professor Adams yesterday pointed out some of the difficulties of the income tax law, and I can say that one of the great problems confronting us is the valuation of property in figuring the profit or loss on the sale of the capital assets. We have to go back to January 1, 1911, and after a period of ten years has elapsed, it is interesting to note how the valuation of property from that time has increased. I would suggest that any state that is going to enact an income tax law should spend considerable time in tabulating valuations, so that as the years go by, and this question of fixing the value of property at any date becomes important, you will have the data upon which you can go back and determine what property was worth at that time.

This problem also comes up in the administration of the federal income tax law, and we are helped a little bit by the fact that January 1, 1911, and March 1, 1913, were so near together, and in some instances at least the government accepts our valuations, if

we have valued the property first, or we accept the government's valuations, because there was no very great difference in the value of property on those two dates. You can easily see that a question that is open to difference of opinion like that will necessarily cause considerable confusion and a whole lot of difficulty, although we meet it fairly satisfactorily, and both the commission and the taxpayer are satisfied with the valuations that we finally determine.

But if, when an income tax law is passed, the state would immediately proceed to collect data with reference to the value of farm lands, with reference to the values of plants and fixed assets in the different parts of the state, and have them tabulated, it would save a great deal of unnecessary work in years to come, when it becomes necessary to fix a value on that property.

Another phase of the law that is open to difference of opinion is the matter of depreciation and depletion and obsolescence. When the Wisconsin income tax law was passed, we had very little to guide us. The federal excise law had been in operation only a year or two, and the matter of depreciation had not at that time been given consideration, at least not the consideration that it has been given since.

The Wisconsin tax commission called upon the engineers of our railroad commission to recommend rates for depreciation of fixed assets, and the tax commission at that time published circulars recommending certain rates as the maximum. We have found that practically everybody thought that he was entitled to the maximum rates, and in recommending as a maximum rate ten per cent on machinery, where there was a classification of that machinery, we have found that in ten years a great many concerns have practically written off their machinery and still have plants one hundred per cent efficient, which of course shows that the rate of depreciation used was much too high. We are now engaged in revising the returns of some corporations for a few years back, and adjusting depreciation to a reasonable basis.

The question of depletion of mines also causes a lot of work. We have some lead mines, as you know, in the southwestern part of Wisconsin; we have a few iron mines up in the Lake Superior region; we have large gravel industries in the state, since our program of road-building has become extended, and naturally every year these questions of depletion come up, and that of course requires us to go back, where the property was owned before 1911, and fix a valuation at that time.

On all the old properties we have these matters pretty well worked out now, but the question of depletion of course comes up where every new gravel pit is opened, or where new mines are opened up.

Another point that we have to face every year is to determine

when certain losses are actually incurred. During the years of high income, it was quite common to try to anticipate losses, and we had a very complex situation. Our law was not changed to meet the complex situations arising from the war, and we have had some very interesting cases, where corporations or individuals entered into contracts for the purchase of raw material extending over a long period of years, or for goods to be delivered each year as required. In the meantime the market price of the particular product has perhaps dropped seventy-five per cent, and the question of whether the loss should be deducted in the year in which the contract was made, or when the material was used and actually went into the cost, was one of the questions that we have had to meet.

We feel in Wisconsin that the success of our income tax law is largely due to the administration. As you know, the Wisconsin tax commission is composed of three members, who are appointed for long terms. They are supposed to be at least two of one party and the third of another party. Usually we have two republicans and a democrat on the commission. I can say that politics, however, has never entered seriously into the work of the commission, and the employees are civil service employees, who hold office during efficiency and good behavior. Our assessors of incomes are taken from the civil service list, and we have now a great many assessors who were appointed when the law went into effect. As they are not in danger of losing their jobs if they happen to offend some influential taxpayer, they go ahead fearlessly and perform their duties, and in that way we get a very efficient administration. The office force, also being under civil service, is not interfered with. We have employed several high-class accountants to assist us in checking the books of corporations, and these men, being under civil service, go out and fearlessly perform their duties. We of course have some difficulty in retaining our best accountants, for the reason that the corporations throughout the state soon come to realize the character and efficiency and ability of these men, and hire them away from us. That is something of course that will happen generally. The state very seldom pays the salary that is paid in private industry, and I presume in every state in the Union a great many of the efficient employees eventually step out into private business.

In recommending a model income tax law, I should think that an organization like this ought to go on record as being in favor of having the employees, other than the tax commission itself, placed under civil service rules, so that they may be entirely free from the influence of politics or influential taxpayers. I thank you.

Captain W. P. White: I should like to ask the speaker one

question: Are the farmers exempt from this tax; if not exempt either directly or indirectly, what portion of the tax do they pay?

Mr. Strader: The farmers are not exempt from the tax, but our statistics show that only about fifteen per cent of the farmers are ever assessed for any income tax at all, and that the average assessment against the farmers that are assessed is about $15. The farmers pay but very little income tax in cash, for the reason that we have the personal property offset provision in the law, and as the farm animals of the farmer are classed as personal property, his personal property tax receipt generally offsets his income tax, so that except in cases where farmers have sold their farms at a profit, and are assessed on a large income for some one year, it is pretty safe to say that the farmers are not paying the income tax.

Chairman Bullock: I now call upon Mr. Ivins, the deputy commissioner in charge of the administration of the New York state income tax—Mr. Ivins.

James S. Y. Ivins of New York: A number of states are considering the advisability of passing income tax laws. I received a letter in May or June from the interim committee of the legislature of Minnesota asking for a copy of our statute, and any comments I might make on it. In the light of our three years' experience I was able to make a number of criticisms of our own statute. A lot of little things that could not have been foreseen when the statute was originally passed had cropped up and it had been necessary for us to amend the statute in a number of respects; and there are a number of other respects in which it should be amended. After having prepared this criticism, I was able to send it to a half-dozen other states, which sent in similar inquiries, and it occurred to me that it might be well to do somewhat the same thing for the model tax law, in the light of our experience. I do not mean to criticize the model tax law. I think the model tax law is probably a better statute than our New York law; but necessarily in drawing a statute of that kind it is impossible to foresee a lot of little difficulties that will arise in administration; and I have found that there are a number of minor points in which I think the model tax law might be amended.

A philosopher of whom I am fond once remarked that a bad reputation is better than none. I might say to a state that had to have additional revenue, a bad income tax law is better than none, but it is pretty hard to turn a bad reputation into a good reputation, and it is pretty hard to amend a tax law after you once get it on the books.

Now, we have a pretty good legislature in New York; I think it is as good as legislatures generally. I might quote what I heard at a minstrel show not long ago, where it was said that it is as good a legislature as money could buy.

When we found that we had to have an income tax law to meet the deficit in revenue due to the abolition of our liquor tax laws, the legislature employed a commission of experts to draw the law. The law was passed without a dissenting vote, but when these little defects developed, and we went back to the legislature to have them corrected, we found that there was usually somebody in the legislature who had a spoke to put in our wheel. Where the amendment was one which would relieve somebody, without increasing the burden on anybody else, it was easy enough to pass the amendment, but when it was a case where we discovered that somebody was enjoying a privilege or an exemption to the detriment of the balance, that group or class was generally able to muster enough votes in the legislature to prevent the passage of our amendment. I will cite just a single example. Our law provides for the deduction from gross income of bad debts, found to be worthless and written off during the taxable year. We found that after a couple of years a number of taxpayers who had been in the habit of supporting other members of their families—a man who had been giving his mother an allowance, situations of that kind—found that instead of giving the money to the mother it paid to lend it to her and write it off as a bad debt. So we proposed an amendment last winter, limiting the deduction of bad debts to debts incurred in the regular course of business or to transactions entered into for profit, but we could not get the amendment through the legislature.

I find that the people I meet here from all parts of the country are very much like the people in New York, and I am led to believe that the legislatures in the other parts of the country are very much like the legislature in New York, so my message is, as far as possible get your income tax law, if you are going to adopt one, into proper shape in the first place and take advantage of the mistakes in other states, and anticipate these little difficulties of administration.

I have prepared a number of little suggestions for modification of the model income tax law. I shall not have time to read them, and it would be almost impossible to follow them orally, so I have decided to ask leave to print them in the minutes of the conference. It occurred to me also that there were a number of states in which the income tax question would come up before the minutes of the conference were printed, so I had printed myself a number of copies of my little criticisms. I am sorry I did not print enough to put all around. I have about one hundred copies and I think that will be enough for all those who are immediately interested, and I shall be glad to furnish copies to anybody who cares to come to me and ask for them.

(The statement referred to by Mr. Ivins is as follows.—Ed.)

COMMENT ON THE DRAFTS OF PERSONAL AND BUSINESS INCOME TAX ACTS PREPARED BY THE COMMITTEE TO PREPARE A PLAN FOR A MODEL SYSTEM OF STATE AND LOCAL TAXATION

JAMES S. Y. IVINS

Deputy Tax Commissioner, in charge of New York Personal Income Tax Bureau

The model acts drafted by the committee of the National Tax Association were prepared in the latter part of 1920 and were largely based on the federal law in force at that time and the Massachusetts, Wisconsin and New York laws. The New York law was then very new—we had collected one year's taxes under it and had discovered several practical defects, to remedy which amendments had been prepared. Some of these amendments were embodied in the model acts. Since then both the federal and New York laws have been considerably amended, in the light of experience, and experience has shown how they might well be still further amended.

It seems to me that a number of changes in the model acts are suggested by our three years' experience under the New York law—changes which would make for more equitable application and for simplicity of administration, and which would obviate the necessity of litigation to settle questions of construction.

Our experience under the New York law emphasizes the advisability of eliminating defects in such laws before their original enactment, for it is not as easy as it might seem, to make corrections by amendment, after the original law has been written on the statute books.

As I have traveled around the country I have noticed that the people in the different parts are not unlike the people in New York —they behave, talk, and I believe think, in just about the same ways. So I am inclined to the belief that legislatures in the various states are not very different from the New York legislature. Our legislature in recent years has unquestionably been better than at periods in the past, but its methods at times can hardly be said to be scientific, and, like Congress, it does contain members who regard the wishes of certain groups of their constituents as more immediately important than the general welfare of the people of the state as a whole.

We could hardly expect it to be otherwise, in view of the way in which the personnel of the legislature is selected and the rate at which the members are compensated. And what is true in New York is very likely to be true in the other states. Lobbying, log-

rolling, and "practical politics" frequently interfere with scientific legislation.

When it appears that a new source of revenue is necessary, legislatures are not unwilling to leave the drafting of statutes to commissions of experts and to enact their bills substantially as introduced. But when a minor change is suggested it frequently happens that special interests are able to muster sufficient votes to sidetrack the amendment, or to emasculate it.

Amendments lightening the burden of all taxpayers are easy of passage. But if, because of some defect in the original enactment, it develops that a group or a class is enjoying a privilege or an immunity, denied to the majority, and an amendment is introduced for the purpose of eliminating it, that group or class is usually able to organize sufficient opposition to the amendment to prevent its passage.

An example is section 353 of the New York law, which corresponds with section 303 of the model act. It provides for the ascertainment of gain or loss on the sale or other disposition of property. The question arose as to whether "other disposition" meant exchange only, or whether it included *gift*. A certain taxpayer, who had decided to set his sons up in business and wished to give them a million dollars, bought securities on the market for approximately half a million. When they had increased in market value to about a million he *gave* them to his sons, who promptly sold them. A profit was unquestionably realized. As counsel to the income tax bureau I regarded this profit as having been realized by the father at the time he disposed of the securities, by giving them to the boys—he had got credit for a gift of a million, had had the satisfaction of giving a million, but it had only cost him five hundred thousand. Income had accrued to somebody. Under our law it had not accrued to the boys, for they had taken the whole million as a gift—an item in capital, not income account. But our courts held that the father had realized nothing (*Peo. ex rel. Wilson v. Wendell*, 196 N. Y. App. Div. 596). And five hundred thousand dollars had escaped taxation — for those who lost, while this gain was made (if there was any loss) undoubtedly deducted their losses in computing their net income. We have had to refund several hundred thousand dollars to taxpayers, as a result of this decision, and are losing potential revenue amounting to not less than half a million dollars a year.

So we went to the legislature to have the statute amended to apply to profits or losses, realized on the "sale, *gift* or other disposition of property." In 1921 our amendment was defeated by a lobby representing charitable corporations who contended that the amendment would discourage gifts to charity. In 1922 we modified the amendment, so that it only applied to gifts of intangibles and

even then not if the donee were a charitable, educational, or other eleemosynary institution. But somebody got busy with the legislature and our amendment disappeared.

Another example: We found that the provision of paragraph 3 of section 376 of the New York law (identical with paragraph 5 of section 600 of the model act) was cumbersome in administration. Instead of a penalty of not more than one thousand dollars, to be sued for by the attorney-general (and fixed by a jury), we recommended a penalty of not more than one hundred dollars, to be assessed by the tax commission, in case of failure *without* fraudulent intent to furnish information. The bill was amended without notice to the tax commission to read "*with* fraudulent intent," and would have added a superfluous penalty in fraud cases, while it deprived us of any remedy in cases where no deliberate fraud could be proven (and it is no easy matter to prove fraudulent intent). We had to get the governor to veto the bill as passed.

So the burden of my advice to states about to adopt a tax law is: *Get your statute in proper shape in the first instance! Do not rely on the possibility of amendment to correct initial mistakes! For amendment is not always as easy as it looks.*

My criticisms of the model acts, in their present form, are of course matters of opinion, and I expect to be overruled with respect to some of them. They are merely suggestions, resulting from experience of over two years as counsel to our income tax bureau, and a year as director of it.

I will refer, *seriatim,* to the sections of the model tax law which I believe might well be amended.

The Personal Income Tax

Sec. 2, Pars. 4 and 6. If corporations are taxed differently from individuals, trustees under so-called "Massachusetts trusts" should be treated as corporations rather than as individuals, for they enjoy most of the advantages of corporations. These definitions should be modified accordingly, as should section 201.

Sec. 2, Par. 9. Thousands of individuals and firms use fiscal years ending on days other than the last day of a month. There is no real advantage to be gained by making them change their accounting period to end on the last day of a month, as this provision, strictly enforced, would compel them to do. Both the federal and the New York statutes contain such provisions, but it has been found impracticable and unnecessary to enforce them, and reports are regularly accepted for periods ending in the middle of a month. The provision would be better if it read "The words 'fiscal year' mean an income year ending on any day other than the thirty-first of December."

Sec. 2, Par. 11. This leads to great injustice, double taxation

in some cases and avoidance in others, depending on the time of change of residence. I recommend the scheme adopted in New York of defining "resident" as one domiciled in the state, thus eliminating any question of whether there is any distinction between residence and domicile, of whether a man is a resident under the income tax, but a non-resident under the inheritance tax, etc. And it seems fairer that residence during the time the income was received should control, rather than residence at the time (or on a certain day during the year in which) the tax is paid. A resident of the state for only one month should not, in justice, be taxed as a resident for the whole year, nor should one a resident for seven months escape the tax entirely. Under the present New York scheme, one moving into or out of the state, files a return as a resident for the fraction of a year during which he was a resident, and as a non-resident for the fraction during which he was a non-resident, prorating his exemptions between the two periods. No injustice arises. The model tax law does not contemplate taxing non-resident individuals, but the principle is the same, and double taxation or escape from taxation may be avoided, by looking to the income year rather than the tax year, and in case the taxpayer has been a resident during only a fraction thereof, taxing him only on income received during that fraction and allowing him only a pro-rata exemption.

I do not recommend for other states the provision of the New York law treating as residents all individuals maintaining permanent places of abode within the state and spending seven months or more within the state. As applied to persons domiciled in the state it is superfluous. As to persons domiciled elsewhere, its constitutionality is doubtful. It was put into the statute to reach persons maintaining theoretical domiciles elsewhere but actually living within the state—most of whom will probably be held to have actually been domiciled within the state, when it comes time to adjust their inheritance taxes.

Sec. 201. See note on sec. 2, pars. 4 and 6 above.

Sec. 201, Par. 1. Why should the residence of the fiduciary have anything to do with it? Is it not better to let jurisdiction depend on the residence of the creator of the trust, at the time it was created? Then there is no question of splitting up, as under the section as it stands.

Sec. 201. Where income is accumulated by a fiduciary, it is quite proper that he should pay the tax out of that income. But at what rate? If there are ten beneficiaries of a single trust, each of whom will eventually get $1,000 of a given year's income, should the tax be $450, while if there are ten separate trusts, the tax will be $100? If a single beneficiary will eventually receive $1,000 of the year's income from each of ten separate trusts, should the aggregate tax

be $100, while if it were all one trust, the tax would be $450? Should not the rate of tax depend, not on what the fiduciary receives, but on what each beneficiary will eventually get from all trusts; or from all sources?

Sec. 301, Par. 1. The supreme court has held, under a similar definition in the federal law, that the increment of property held—the profit on capital assets acquired and sold—is "income" and subject to taxation as such. It is clearly the intent of this section to include it as an item of gross income. A practice has grown up of attempting to avoid the tax by making gifts of property that have increased in value in the hands of the taxpayer. The present federal law makes a very clumsy attempt to meet this by comparing sales price on disposition by the donee with cost to the donor. But the latter is likely to be very difficult of ascertainment, at the time when the donee finally disposes of the property. In theory a donor realizes his profit when he makes the gift and gets credit for giving the whole property including increment, not merely its cost to him. This section and section 303 should be made to show that a gift is a disposition of property which may result in profit or loss to the donor. In case of loss of value, the donor will get his deduction anyhow, by selling the property and giving the proceeds, so the state might better get its tax when a profit is involved.

Sec. 301. Are dividends on national bank stock included in gross income? If so, is the tax constitutional? Or does it render the tax on bank shares void? It might be well to avoid these questions by deciding them before passing the law and making the decision appear in the language of the act.

Sec. 303. See note on sec. 301, par. 1, above.

Sec. 303. In view of the decisions in *Goodrich* v. *Edwards,* 255 U. S. 527; *Brewster* v. *Walsh,* 255 U. S. 536; *Peo. ex rel. Klauber* v. *Wendell,* 196 N. Y. App. Div. 827 (affirmed without opinion by the N. Y. Court of Appeals), and *Brown* v. *Com'r of Corporations,* recently decided by the supreme court of Massachusetts, should not this section be amended as have been the corresponding sections of the federal and New York laws?

Sec. 305. The last clause, tying up to the rulings of the federal government is dangerous. Stability is as important as consistency with the federal methods, and the federal administration has left much to be desired in respect to the former quality. The state tax commission should be permitted but not compelled to follow federal rulings.

Sec. 306 (h). See second note on sec. 303, above. Where this section applies to property acquired prior to the effective date of the law, should not depreciation or obsolescence be taken on the same basis as profit or loss?

Sec. 308, Par. 1 (b). In New York we have had a lot of trouble

over the personal exemptions. The provision giving $2,000 to the head of a family has been grossly abused. There are without question tens of thousands of persons taking this exemption in New York who are not entitled to it—cases where two or more children, contributing to the support of the home, are each claiming to be the head of a family. It might be possible to check up many of these cases, but the cost would usually exceed the resultant additional revenue. The model tax law does not define "head of a family"—an omission certain to result in abuse, for every taxpayer will supply his own definition. I recommend omitting any reference to head of a family and restricting the exemptions to $1,000 for each adult taxpayer—husband and wife to have $2,000 if they make a joint return and $1,000 each if they make separate returns. At first the provision of the New York statute was like that of the model tax law, in allowing husband and wife, making separate returns, to divide the $2,000 exemption, without restricting the division to an equal one. We had to amend the law to insert the word "equally" between "divided" and "between them," for there were a great many cases in which husband and wife could not agree on the basis of division and tried to take, between them, more than $2,000. Also, the unequal division was made the means of avoiding taxation at the higher rates when joint income or the income of one, separately, would be taxable at more than one per cent.

Sec. 308, Par. 1 (d). Why should a fiduciary be allowed an exemption at all? Exemptions are defended in the case of individuals on two grounds: (1) that it does not pay to collect taxes on very small incomes (but if it does not pay to collect $5 from a man with $500 net income, does it pay to collect $5 from a man with $1,500 net income?); (2) that an individual needs a certain minimum for subsistence before he should be taxed at all. The first reason is obviously fallacious. The second has no application to a fiduciary.

And the granting of $1,000 exemption to each fiduciary has resulted in the creation of many small trusts, for the purpose of increasing exemptions. A man with property yielding income of $8,000 a year, which he wishes to accumulate in trust, pending a future event, can divide it and set up ten separate trusts, each yielding $800 per annum—resulting in complete avoidance of the tax. See note on sec. 201, above.

Sec. 308, Par. 2. If an exemption of $2,000 is to be allowed to the head of a family (see note to sec. 308, par. 1b), will this result in allowing a man with children, whose wife dies during the year, to take $2,000 as head of a family, plus $200 for each child and to add $1,000 for the deceased wife? If a man with a wife and no children loses his wife and marries again during the year, can the couple take $2,000 and another $1,000 for the deceased wife? This provision should be made more definite.

Sec. 400. No return is required of a single man with net income of less than $1,000 or a married man with net income of less than $2,000. But a married man with five children and income of $2,800 must make a return though he pays no tax. We get thousands of these no-tax returns in New York, but the audit of them very seldom results in any change in the amount of the *exemptions*. On the other hand, the audit of no-tax returns frequently results in the discovery of additional *income,* or the disallowance of deductions improperly claimed, and assessments are accordingly made. It is a mistake to have the liability to make a return depend on the amount of *net* income. A man with a gross income of $100,000 may figure that he had a loss of more than that amount, and make no return. We have nothing to audit. If he made a return it might appear that his loss was not properly deductible, and we would assess a tax. I should recommend, in lieu of the present provision, a requirement that all persons with *gross* incomes in excess of a stated figure (the present federal law says $5,000) shall file returns, but that no returns need be filed by persons with gross incomes under that amount if their exemptions exceed their net incomes. This would result in the possibility of discovering on audit additional *net income,* in cases where such discovery is likely, and eliminate the necessity of auditing returns merely for the purpose of checking up the number of dependents—a process the cost of which is excessive, in comparison with the resulting additional revenue.

The tax commission should have power to require a return in any case it chooses to investigate, regardless of the amount of gross or net income.

Sec. 401, Par. 1. See note on sec. 308, par. 1 (d). If the exemption to fiduciaries is eliminated, all fiduciaries should be required to report.

Sec. 403. Both the federal government and the state of New York found difficulty with the scheme of having taxpayers whose fiscal year ended say April 30, 1920, wait until March 15, or April 15, 1921, before making a return, and amended their laws. Why is it not better to require returns within a given period after the expiration of the *income year.*' This not only prevents delays during which the business of auditing grows more difficult, but to a certain extent relieves the receiving tellers from having their work all concentrated in one short period.

Sec. 500, Par. 2. In New York we have had a lot of trouble with bad checks, protest fees, etc. One who tenders a check in payment of any tax, which check is dishonored on presentation, should be subject to criminal prosecution. This is the only way to put a stop to many abuses which have been common experience.

Sec. 501, Par. 6. The provision for refund says nothing about

interest. Is it intended that interest should be paid or not? This should be definitely stated. In my opinion, if the overpayment was due to erroneous rulings on the part of the tax commission, interest should be allowed at a stated rate; but if the overpayment was due to negligence on the part of the taxpayer, he should not be allowed interest.

Sec. 502. The last sentence is dangerous. "No tax amounting to less than one dollar shall be assessed." This might be a good rule for the tax commission to adopt for its internal management, but it would be poor policy to publish it as part of the statute—many taxpayers would deliberately make errors of ninety-nine cents in their own favor.

Sec. 600, Pars. 1 and 2. These paragraphs should also provide penalties for partnerships and persons required to file information returns under sec. 402, who fail to file returns as required. Nothing in the statute now covers them unless fraudulent intent is provable, except the practically useless provision of sec. 600, par. 5 (see note thereon).

Sec. 600, Par. 4. Too cumbersome. Sec. 600, par 9 is much better and would always be used instead. This seems to conflict and would be much better omitted.

Sec. 600, Par. 5. We have this provision in the New York law, and it is too cumbersome to be useful. It leaves the fixing of the penalty to a jury, and its collection to the sheriff. Bear in mind that this penalty is for non-fraudulent failure to act. Fraudulent acts are otherwise provided for. It would be much better to make the maximum lower and allow the tax commission to assess it, without recourse to the courts. I suggest "Any person who, without fraudulent intent, shall fail, etc., . . . shall be liable to a penalty, in addition to all other taxes, interest and penalties provided for by this act, of not more than one hundred dollars, to be assessed by the tax commission and collected in the same manntr as an additional tax found due under section 502." This would give the tax commission a really practical method of enforcing the requirements of the law.

But a penalty of $100 would be insufficient in case of a large partnership or an employer of thousands of taxpayers who failed to file information returns under sec. 402, so sec. 600, pars. 1 and 2 should also be amended.

Sec. 701. Power to review should be limited to appellate courts. If every county court can review, there will be great conflict of rulings. Why not provide for the same kind of review as is allowed on appeal from a trial court—the tax commission, being expert, is more likely to be right in the first instance than a county or circuit judge.

Sec. 801. The tax commission should be specifically empowered

to delegate the right to require the attendance of witnesses, take testimony, etc., or it might be held under the rule of *delegatus non potest delegare* that only the commission itself could do these things. The agent who examines books should also be allowed to examine witnesses.

Sec. 805. What constitutes a proper judicial order? Does a subpœna in a divorce case constitute one? Or is it intended that returns shall only be produced in proceedings arising under the income tax law itself? Does this prevent the commission from furnishing a copy of a return to the taxpayer who made it, or to his executor? Much trouble can be saved by settling these questions in advance. We had to amend the New York law to avoid litigation on these points.

Sec. 901. In exempting intangible personalty look out for your bank stock tax under the Richmond bank case.

The Business Income Tax

I believe that the comments above made on the personal income tax act apply equally to the corresponding sections of the business income tax act, as far as the following sections are concerned:

Personal			*Business*	
Sec.	*Par.*		*Sec.*	*Par.*
2	6	.....	2	5
2	9	.....	2	10
200	2	.....	200	2
301	1	.....	301	1
303		.....	303	
305		.....	305	
306	h	.....	306	f
2	11	.....	311	
400	1	.....	400	1
500	2	.....	500	2
500	6	.....	500	6
502		.....	502	
600	4	.....	600	4
600	5	.....	600	5
701		.....	701	
801		.....	801	
805	1, 2	.....	805	1, 2
901		.....	901	

Business Tax Act, Sec. 503. We have experienced considerable difficulty in New York in collecting assessments against non-residents. Jurisdiction to levy the tax is dependent on jurisdiction to enforce it, and the Supreme Court of the United States has indicated the right of a state to enforce such a tax by arrest of the person (*Shaffer* v. *Carter*, 252 U. S. 36, at 49). It is doubtful whether a tax on the right to do business can be executed, in the

case of a non-resident, against property within the state which is not connected with the business; and obviously property without the state cannot be reached. I suggest a provision for body-execution in the case of non-residents; this would not necessarily be unconstitutionally discriminatory, any more than are provisions for writs of attachment.

I suggest the renumbering of the sections in the two acts so that corresponding provisions will have exactly corresponding numbers. It makes little difference if a number has to be skipped here and there, but endless confusion is likely to arise if identical passages have one number in one act and a different one in the other. When amendments are made by eliminating old sections or adding new ones, renumbering should be avoided—the old numbers of repealed sections should just be dropped and new sections should be given new numbers (using letters or fractions), thus avoiding the necessity of referring to "section 1006, formerly 1004" or "section 1006, which was 1004 when *Jones* v. *Smith* was decided."

Chairman Bullock: I might say, perhaps, that Mr. Ivins has submitted to us a number of helpful suggestions and criticisms, and I know we are all greatly indebted to him and are glad to give him leave to insert them in the minutes.

Time is short. May I ask the gentlemen to keep their seats, in order that we may proceed without interruption. There will be time after the adjournment to get these copies. Now, I want to call on Mr. Shaw, of Massachusetts. Is Mr. Shaw in the room?

I. L. Shaw of Massachusetts: Mr. Chairman, and members of the conference: The Commonwealth of Massachusetts is now completing its sixth year of administration of the personal income tax law. This law, however, is not, as the federal and New York laws are, and as I think Wisconsin is, in any sense a general income tax law. It is rather a series of special income tax laws, or perhaps we might call it a classified income tax law. Instead of having a rising scale of rates, Massachusetts adopted the scheme of a different rate upon different classes of income. For instance, the income of the productive worker—business income, income from professional employment, trade or business—is only taxed 1½%; income from investments, where the individual simply holds and cuts the coupons from his bonds or receives the dividends from his stocks, is taxed at 6%. Throughout the state the rate is the same on everybody, whether he has a few dollars or a great many dollars. There is, of course, the usual minimum of income from business which goes without tax in our state. We really had an income tax long before anyone else—on the books at least—a remnant of the old colonial faculty tax, and we have been taxing income from trade or business under the general property tax law for many years.

The income tax which went into effect January 1, 1917, was not intended as a cure-all for all the tax ills that would ever arise thereafter. It was really a substitute for the general property tax, which worked so very inequitably on intangibles. Certain localities were favored with an influx of wealth, simply because their rate was low, and one little town down on the Cape might have declared a dividend instead of having a tax rate, if it had not been for the income tax law stepping in to change the system. People moved from the cities and high-rate towns to low-rate towns, thereby making the inequalities all the more inequitable; the high rates went higher, and the low rates went lower, because of the changes in domicile, technically or otherwise. I probably ought not to attempt any advice, but since Massachusetts was the second state to enact an income tax law, which has been working for six years, perhaps it won't be out of place to make a few suggestions. For instance, centralization of administration is almost an absolute necessity. It is difficult enough under our scheme to keep the deputies in the Berkshire Hills working on the same basis as the deputies on Cape Cod, and they are not so very far apart, as you measure distance here in the West, so that I assume it to be axiomatic that an income tax, without centralized administration, is pretty sure to get into trouble. I think probably the greatest danger to the success of income taxes, as I see it at least, is the danger of the insidious nibbling away at the cheese by certain interests attempting to secure, as Mr. Ivins has suggested, special deductions for their peculiar cases, thereby undermining the tax and getting the public to feel that the tax after all is no better than the old general property tax, with all its inequalities, due to the differences in administration.

I may cite just one example. One tax, as I say, is a graded business income tax at one rate, and all the deductions and exemptions are confined to that rate and to that class of business income; interests and dividends are taxed at another rate. There are deductions for losses from sales of property, or any of that sort of thing in connection with income from interest and dividends, or the holding of securities, unless it is in the course of business. The interest and dividends received are always taxed at 6%, or should be, because the constitutional amendment requires that all income of a given class must be taxed at the same rate.

Now, in Massachusetts, and particularly in Boston, we were right up against it on that proposition, because our pawnbrokers were not permitted any deduction for their overhead expenses from the interest that they receive from loans; there was no provision for any deduction from the interest, and dividend class of income, for overhead or any other expense, so they came to the legislature with a proposition. First they went to the courts and the courts

told them that the law was as is, and that interest must be taxed as interest. They said, "This is our business and it ought to be taxed as business income"; but the court said, "Notwithstanding it is your business, it is interest and it must be taxed at the interest rate, otherwise it is unconstitutional."

They did have a real grievance, because they were being taxed not only on their interest received at the high rate of 6% and got no deduction, but on top of that they had to pay a tax to the local authorities on the pledges held for the loans. After considerable discussion it seemed to be a place where a little equity ought to be dealt out, and the legislature finally agreed to provide that the interest received by persons in the business of loaning money on the pawn or pledge of tangible personal property should be taxed at the business rate, 1½%, and not at the 6% rate. That was the opening wedge. Next came the cotton and wool brokers, who buy their goods of the growers and sell them to the mills on bills of lading, and they said, "We come in this class also, you cannot tax us on this interest that we charge the growers, when we advance 75% or 60% of the price of the goods, before we have sold it; this advance is secured by the bill of lading; this is a pawn or pledge of tangible personal property." Well, there is an argument there, no doubt. Up to the present time, however, no case has gone to the courts. We have constantly ruled against it wherever we have found it done. It is probable that a case may go to the courts. It is probable that the courts will uphold the position the commission has taken, but if the courts don't, there is another place where a little tinkering must be done with the statute, which ought, in my opinion, to have been done in another way.

On these same lines, last winter there was presented a bill by the bankers and brokers urging that the legislature put their interest in the class of business income, because they said, "This is a charge for service we perform in looking up the reliability of somebody, and so forth, and we ought not to pay at the high rate of 6% on our interest." Fortunately, we had an exceptionally good tax committee, with an exceptionally good senate chairman—a good, clean, deep thinker who saw the whole problem, instead of just one or two items as sometimes happens, and that bill was not passed, but if it had, how long would it have been before the people would have been getting the idea—this socialistic idea—that favoritism was being shown to certain classes all the while, and there was no hope for the poor. This is just one example of what I mean by insidious nibbling at the cheese, undermining the strength of the law.

CHAIRMAN BULLOCK: The gentleman has two minutes more.

MR. SHAW: In conclusion, I should like to say that the Massa-

chusetts income tax law, devised as I said, as a remedy for certain people only, and not as a general remedy, has met with the approval of the people. I do not recall, in all my six years' experience in the administration of the law, a single individual who has been willing to say definitely that he would like to go back to the general property tax methods, in spite of the fact that the well-to-do are paying bigger taxes than they ever paid before.

The law has been productive. From the best figures we can make, it seems a fair statement that intangible property has contributed more than double what it did under the old general property tax system, so that I should like to reiterate, with the utmost emphasis, the suggestion by Mr. Ivins that any state contemplating an income tax law, be careful to get an accurate, good law, if it means a wait of a year to do it, and also one with fair and adequate rates, so that the rates won't be figured with difficulty and confuse the investor with the feeling that he is never quite sure what the rate is going to be. Keep the rates level, keep the law intact and stand pat. Thank you.

CHAIRMAN BULLOCK: Before recognizing any further speakers, I want to announce that a resolution has been handed in at the desk, which I suppose is still open for consideration by the committee on resolutions. I will read it and then pass it to the chairman of the committee.

(Reading): *Resolved,* That the secretary invite the important real estate organizations of the country to become members of this association.

OSCAR LESER of Maryland: Isn't that rather a question for the tax association?

CHAIRMAN BULLOCK: Well, it has to go to the committee, and they can decide what to do with it.

Now, gentlemen, we have heard from three income tax states. There are more, and I hope we shall hear from them later, but before getting around to that, it seems to me well to hear from about three of the states that have experimented with the classification of property.

The first state, as far as I recall, to try significant experiments along these lines was Pennsylvania. There, for a long while, they have had a four mill tax on intangible personal property. Mr. Lewis, the Auditor General of Pennsylvania, is here, and I wish Mr. Lewis would tell us briefly something about the present status of the Pennsylvania tax on intangible property.

Is Mr. Lewis present?

(No response)

CHAIRMAN BULLOCK: We will pass on to the next state that

embarked on this branch of classifying intangibles, which is Maryland, and I will ask Judge Leser to tell us something about the tax on intangible property in Maryland.

MR. LESER: Mr. Chairman, I have told about this so often that I am afraid it is a rather stale story. Maryland did follow the example of Pennsylvania. The act was passed in 1896, and passed, I may say, without very much consideration. They had a way of passing bills in Maryland in those days so that even the members of the legislature did not know they had passed them until afterwards.

The particular bill in question was inspired largely by the trustee corporations, which found it impossible to make truthful returns under the general property tax and survive. I made inquiry once from an older officer as to just what his method of dealing with this tax question was in the old days; whether he made any effort or any pretense of reporting in full all of the investments held for beneficiaries. He said their practice was to come to an agreement with the local taxing authority upon an amount which they considered fair, and to pro-rate the tax then paid at the full legal rate among their various estates, and it opened my eyes to a truth which I think everyone of us recognize; that the greatest amount of tax-dodging is not done by taxpayers, but that it is done by tax officials. No assessor with a heart and with a desire to continue to live in his own neighborhood would undertake to list and to value at their full value the intangible investments of his own people, knowing that only a very small fraction was being reached, and knowing that it was practical confiscation.

Pennsylvania, I think, started in the 80's—I believe the first act was about 1885. A rate was then imposed of four mills on so-called moneys and credits, but curiously enough in practice it does not apply to moneys. I cannot find that in Pennsylvania they tax bank deposits under that act. There was a rate of five mills in Pennsylvania on bonds of domestic corporations, and collected at the source, the presumption always being that the bond was held by a resident of Pennsylvania unless the corporation affirmatively established the fact to the contrary.

The figures available in Maryland, certainly back twenty-five years ago, are mostly those of Baltimore city, which has a population now of over one-half of that of the whole state, so you get a pretty fair idea of the way this thing works, by taking the figures for that city. In round numbers the amount of intangible property on the books in 1896 was $6,000,000. Under the new law, which reduced the rate to three mills, or thirty cents per hundred dollars, plus the state rate, which at that time was about 1½ mills, amounted to around $60,000,000 in the first year, and it has grown progressively since that time, until for the present year the figures are

about $267,000,000. You can figure for yourselves just how much of an increase there was in the yield. I am rather surprised to hear that in Massachusetts the introduction of the income tax has only resulted in doubling the yield, because if that were so, then it would seem that better results could be obtained under a classified system, although I will admit, as claimed very often by my New England friends, that their administration under the general property tax was better than it was elsewhere.

CHAIRMAN BULLOCK: Judge Leser, we got a large amount of intangible property under the old system. Instead of getting substantially nothing, we may have gotten ten to twenty percent of it.

MR. LESER: That is the point I am making.

CHAIRMAN BULLOCK: So when we exempted it from taxation, we exempted from two hundred to two hundred and fifty millions of perfectly good property from local taxation. We had to work harder to double it; to increase it three or four times, because you were getting nothing.

MR. LESER: That is the point I was trying to make; complimenting you to that extent. I have never been able to make up my mind whether at the present time it would be a wise thing to recommend the introduction of a state income tax for our state. Conditions may arise when that would be the wise thing to do, but the law is working fairly satisfactorily. I think the outstanding virtue of the income tax is this, that it compels an annual listing. We don't have that under our classified system. The virtue in the annual listing is that once you find a man has an income in the taxable class, you proceed on the presumption that he continues to be a taxable subject each year. There is not the same sort of an inference if a man should happen in a particular year to show up a small amount of taxable intangible property, so I think that feature, in addition to the fact that under the improved and the only effective state income tax systems, the administration is centralized, is largely responsible for the popularity of the income tax.

We had an income tax in Maryland nearly one hundred years ago. They had one in Virginia. They had one in Massachusetts, as you have heard, and I believe there are a dozen or more states that had income taxes years ago.

Mr. Kennan wrote a book on that subject about ten years ago—a most interesting treatise—giving the history of the state income tax movement in the Unied States from the beginning. All of the old income tax systems were, however, ineffective, for two reasons, as I view it; one was that they did not provide for a centralized administration, and the other was that the tax was imposed on top of the general property tax. Wisconsin was the first state in modern times to get away from that, introducing at the same time

another very important improvement, which was that of applying the merit system and the indefinite tenure for tax officials.

CHAIRMAN BULLOCK: The gentleman has about a minute more.

MR. LESER: I shall take my one minute more to tell you that we have at last come into the Wisconsin class, at least in this feature. We now have, at least in the city of Baltimore, the merit system in the appointment of assessors. I had the privilege, first of participating in the decision of the question of whether the merit system should apply, and later also in the formulation of questionnaires for testing out the assessors. I think that will cover all I have to say.

A DELEGATE: May I ask Judge Leser a question: I should like to know whether your classification is restricted or whether it is left entirely to the discretion of the legislature?

MR. LESER: Under the constitution existing in 1896, classification was not permissible. That was another thing they did; they passed a law not only that they knew nothing about, by that was absolutely unconstitutional. Not until 1914 was the constitution of Maryland amended to permit the classification of property, and notwithstanding that, the law was absolutely enforced and never questioned, because it was to the advantage of the public in the matter of revenue and to the advantage of the taxpayer in the amount he paid.

CHAIRMAN BULLOCK: You mean the rate he paid, not the amount?

MR. LESER: The rate.

CHAIRMAN BULLOCK: He had a reasonable rate.

H. S. VAN ALSTINE: I should like to ask Judge Leser a question. I should like to know what has been the effect of the Richmond decision upon your income law, or what you anticipate will be the effect?

MR. LESER: You mean upon our classified law?

MR. VAN ALSTINE: Yes, sir.

MR. LESER: No effect at all. Our banks are entirely satisfied, and I doubt whether a half-dozen bankers in the state know there is a Richmond decision.

MR. VAN ALSTINE: Are your banks taxed on the same basis?

MR. LESER: Our banks are taxed at the one per cent rate for local purposes, plus the state rate, and they are allowed deductions in the assessment of their shares in the form of real estate and certain securities, and they are entirely satisfied with that law.

MR. VAN ALSTINE: Isn't there an opening for litigation any time that any bank chooses to do it?

MR. LESER: There may be an opening, but we are not afraid of it.

MR. VAN ALSTINE: You are fortunate.

MR. LESER: May I say one word more on that? One good reason we are not afraid of it is this; the courts have decided that bank deposits are not subject to taxation, and if the banks start anything, we have our recourse.

CHAIRMAN BULLOCK: There is one other state which has had considerable experience over a considerable period of years with the classification of property, and that is Minnesota, and I should like to ask President Lord, if he is present, to tell us something about Minnesota's experience.

CHAIRMAN LORD: Mr. Chairman, this conference has heard from me sufficiently. I don't care to have Minnesota take up all of the time of the conference. We have been getting into most everything since it opened. The money and credit tax, and I presume that is the subject to which I am expected to address myself, has worked very well in Minnesota. We tax money and credits at the low rate of three mills on the dollar, and our experience under this law is that instead of reaching a few extremely honest people and the few people who have their property so exposed that it is impossible for them to hide it, we now reach a very large number of the taxpayers. About one out of every four, I think, on the lists return money and credits in some amount, so that at the present time we have about 425 millions of money and credits on the tax rolls, 118,000 people assessed for it, whereas under the old general property tax we had a little over 6,000, and a very small assessment of that kind of property, $5,000,000 or $6,000,000 I think, all told.

The money and credit tax, however, reveals one fact very clearly. It does not come quite up to the presiding officer's idea of what taxpayers will do if they are given a fair chance. We meet with the assessors each year and go over their problems with them, and take especial pains to explain this law and its reasonableness, and try in every way to impress upon them the fact that they should explain the law to taxpayers so that they may understand it fully and be able and willing to list their property — yet I am sure that we do not get on the lists under the three mills tax to exceed from 45 to 50 per cent of the property that might properly be listed under that head.

I realize that this is a rather sad commentary on the honesty of many of our citizens, but I suspect that we are just as honest in Minnesota as people are in other states. It is a regrettable fact, possibly the outgrowth of very poor systems of taxation, that the

average citizen feels that it is a perfectly legitimate thing for him to beat the tax-gatherer if he can do so with safety and shunt the burden onto the shoulders of his less fortunate neighbors, instead of carrying a fair share of it himself. But on the whole we regard the three mill tax in Minnesota as a long step forward, over conditions as they existed prior to its enactment, and we are gradually getting a better and better assessment of it as the years go by. If we could be assured of competent assessors in every assessment district, we could probably double the assessment. The failure to secure a full assessment is due largely to the lax character of the assessor's work in many assessment districts.

We have in Minnesota a large number of very competent men who, from a feeling of duty, accept the office of assessor. They certainly do not accept the office because it is a profitable or a pleasant job. They seem to do excellent work and get excellent results under this three mill tax law, but like other states, we have a great many very incompetent men selected as assessors, and where, of course, one of these men lands on the job, the results are poor.

We have stimulated the work in Minnesota by making reassessments in a great many districts, and it does stimulate the work. In making reassessments we have followed the plan of selecting the assessor in the county who has made the best assessment in his own district, and offering the job to him. Sometimes we are able to get him to do the work; more often we find that he is too busy with his own affairs to go out of his own town or village to make an assessment. Then we offer it to the second man on the list, and if he refuses, we turn the job over to one of our field men, some of whom have developed great capacity for uncovering this kind of property.

Now, in any community people would much rather have one of their own people doing this work than to have some outsider come in. They are apt to resent outsiders; but these outsiders do excellent work, and in every township and village where a reassessment of money and credits has been made, the result has been to largely increase the assessment of that kind of property, and it also tends to improve the assessor's work in that community for many years thereafter. The next regular assessor is almost sure to return fully as much as the special assessor did the year before. So these reassessments are of real value.

I think that I have taken up enough of your time with our troubles and our problems. We are convinced on the whole that the money and credit tax law in Minnesota is a good thing. Personally, I would prefer an income tax, if we could have the right kind of a one, but unfortunately in Minnesota, as in many other states, our constitution is in such shape that it seems at present impossible to have the kind of an income tax law that would be worth

while, and so we are compelled to adhere for the present to the three mill tax, and we may even have to dismantle this very desirable tax unless the federal law providing for the taxation of shares of national banks is amended. I thank you.

S. S. KALISHER: Just one question. It is a simple one. May I ask if the tax, for instance, on bonds applies, whether or not interest has been paid or interest has been received by the bondholder?

CHAIRMAN LORD: You mean government bonds?

MR. KALISHER: No, railroad bonds, any corporation bond.

CHAIRMAN LORD: Yes, it would apply to that kind of property unless secured by a mortgage on Minnesota real estate. We have a mortgage registry tax in Minnesota, and where a mortgage is recorded in this state the note or bond which it secures is exempt. It would apply to stock in corporations whose property is not assessed in Minnesota, like stock in a silver mine, if it had any value, in some foreign state.

PHILIP ZOERCHER of Indiana: When you passed that law you put on a statute of limitations barring the collection of taxes for previous years, did you not. In other words, as they call it in our state, you gave an immunity bath to those who did not give in their intangibles for previous years?

CHAIRMAN LORD: There is nothing in the law providing for that, and you could not say with definite certainty that because a man returned, we will say, $10,000 this year, he had the same amount a year ago.

MR. ZOERCHER: But suppose in the return he made that it would show that he had that two or three or four years ago. Did you attempt to go back?

CHAIRMAN LORD: Yes, we went back six years, but it was not because the law had any provision of that kind. We felt that good faith demanded that sort of thing, fair dealing.

W. A. HOUGH of Indiana: I want to ask if under that law you permit deduction of the indebtedness from the assessment that is placed against money and credits.

CHAIRMAN LORD: No deduction for debts whatever.

MR. HOUGH: And the tax is levied on the face value of the note or mortgage or whatever form it may be?

CHAIRMAN LORD: Not necessarily the face value; on the actual selling value, following the same test that is applied in the general property tax.

Mr. Hough: In regard to assessments, you have, as the state board of tax commissioners, power to remove from office an unsatisfactory assessor.

Chairman Lord: We have not, but we have in a few instances complained to the governor, and the governor has power to remove, and the result of those complaints has been that the assessor usually resigned before the governor had a chance to remove him.

Thomas A. Polleys of Illinois: I should like to inquire as to Minnesota, and also I should like to know as to several of the other states that have been represented in the discussion this morning, as to this point: What proportion of the aggregate tax burdens in the year 1921 for state and county and local purposes, is represented by the amount collected from your intangible low rate tax and from your state income tax—as to Minnesota.

Chairman Lord: Total burden?

Mr. Polleys: Yes, total percentage.

Chairman Lord: I think it was about one per cent last year.

Mr. Polleys: That is what I am interested in knowing as to some of these other states; how important it is in the matter of revenue production as compared with the balance of the revenue.

Chairman Bullock: In Massachusetts when we started, it was probably ten per cent, but in view of the increase in local taxes and the slight shrinkage in income tax in these last two bad years, it is less today; how much less I don't know, because I have not looked up the figures.

Captain W. P. White: Mr. Lord, you say there is no credit given for outstanding debts against this tax. Then if a mortgage is placed on a property and the investment of that mortgage money is made outside of the state for greater income than the mortgage itself pays, you don't remit the interest on the mortgage as a debit against the tax?

Chairman Lord: We do not. There is no deduction of any kind. I will say this; in the assessment of book accounts we explain to the assessors that the book accounts of a merchant vary in value all the way from possibly 50% up to 75% of their face value; that the total of a merchant's book accounts never are worth what they seem on the books to be worth. We tell him that some promissory notes are worth their face value while other notes may not be worth the paper they are written on. All those things he should take into consideration in making his assessment of this kind of property.

Thomas S. Adams: Mr. Lord, do I understand that you suggest

that the average business book accounts are not likely to be worth more than 75%?

CHAIRMAN LORD: Yes. I think if you take book accounts that run over a period of six years—back to the limitation period—they would probably not be worth more than seventy-five cents on the dollar.

MR. ADAMS: It would be a pretty good merchant that would hold them up to that basis.

CHAIRMAN LORD: The poor merchant's book accounts probably would not be worth—covering this six-year period—more than 50% or 60% of their face value.

MR. ADAMS: How does that six-year period enter into that?

CHAIRMAN LORD: Because they usually outlaw in six years; we don't go back of that; we call them worthless back of six years.

CHAIRMAN BULLOCK: We are greatly indebted to these speakers, and it was my intention to provide the speakers from these states and then speakers from the floor, but the questions asked have prolonged the discussion by the speakers. This meeting is now open for discussion from the floor or for questions.

ALBERT HANDY of New York: I want to disagree with Mr. Ivins in his statement that a bad income tax law is better than no income tax law. I know the conference would be very much interested, particularly the representatives of the large corporations, in Mr. Ivins' statement that the legislature in New York state is the best that money can buy; but getting back to the subject, I want to say this, that every state law — and there are eleven of them in the United States which have income tax laws—has many good features, which might well be adopted in the model law. On the other hand, there are a great many features indeed which I think should be eliminated from the various laws. It seems to me that the provision contained in the laws of two states, Massachusetts and North Dakota, for a segregation of income between earned and unearned income, is peculiarly vicious for this reason: I recently had a case brought to my attention in Massachusetts. A woman had been living there for many years — the widow of a respected citizen. She had during these years had a little income from local stocks but was barely able to enjoy a decent living from the receipt of that income. During the wartime her income was naturally reduced; then came the income tax law of Massachusetts, taking six per cent. This may not be very much, but it may mean a difference to a woman of this character between comfort and discomfort; it may mean the difference of keeping up respectability and not; it may mean many differences, and it seems to me that any

such provision is peculiarly vicious, particularly in view of the fact that no exemption is allowed on unearned income. That is a provision in the laws of Massachusetts and North Dakota which I think is rather to be condemned, and I think that the committee might well examine those provisions and ascertain whether or not there is any basis for them, or rather if there is any good reason for their being continued.

There is one other point which I want to bring up, and that is this: It has been suggested by a great many opponents of the income tax law that it is bad, because it does not impose any burden whatever upon the citizen who has an income of less than $1000 a year. Of course, Wisconsin only grants an exemption of $800, but most of the other states grant an exemption of $1000. It has been said that no citizen can realize his obligations to the government unless he is directly responsible to the government for a tax of some nature or description. Of course the poll tax, an ancient institution, which is to a great extent obsolete today, covers that to a great extent, but there is one thing which I think might well be considered, and possibly followed. Delaware provides that every citizen over the age of 21 years shall make a return, and any minor having an income of over $1,000. It further provides that no tax shall be levied upon any income under $1,000, but it does provide for a filing fee on every return filed. It seems to me again that this is a very excellent provision, as it makes every citizen realize that he is directly responsible to the state for a certain amount of the cost of state government, and I believe any provision which brings home to each citizen the fact that he is obliged to pay a part of the expense of the state government, will have a tendency to induce economy on the part of the state government, because the citizens who find the state governments are unwisely using their money, the money which they personally have contributed, are going to turn out the legislators who are spending their money without due consideration for economy. I thank you, gentlemen.

Chairman Bullock: If the gentleman will permit me just a moment, I want to say that we in Massachusetts do not recommend our law to any other state. It fitted into the peculiar situation we had, and it was all we could get. There are excellent provisions in the law and it is excellently administered.

W. R. Bradley of South Carolina: There is one feature of the income tax law I have not heard discussed here, on which I should like to get an expression from New York and Massachusetts and Wisconsin; and that is the matter of finality in making a return. I don't think there has been any instrumentality that has brought the federal government and the national law into disrepute, if I may say it, more than the exasperating proposition of having the

return made in 1919 hang over his head like the sword of Damocles and be examined in 1922 when he may find out that he has a lot more tax to pay than he thought. I have in mind a cotton mill down in South Carolina which paid in 1919 $1,800,000. In New York and Massachusetts that is a small matter, but in South Carolina that is an awful amount of money. In 1921 the revenue agent came around and made an examination of the books of the corporation and found that it owed the government $500,000 more. The mill had set aside all of its reserves and had so fixed its books—so lined up its books—that it did not have any money to pay this extra tax, and it was very embarrassing to the mill. I was just wondering if these states that have the income tax law are accepting these returns, making them final, making a final audit of them in the year in which the returns are made, or whether the returns are hanging over into the years to come, to worry the taxpayer. I don't think there is anything in the income tax law that so worries a taxpayer as that procrastination, and I should like to hear from these states along that line.

CHAIRMAN BULLOCK: Will Mr. Ivins tell us about the practice in New York.

MR. IVINS: Mr. Chairman, in New York, with few exceptions, we audit every return received in April of one year before we come to April of the next year, in the personal income tax. I am not in position to speak for the corporation bureau. I am entirely disconnected from it, and I am not familiar with the situation there.

In the personal income tax bureau we clean up each year's audit. When disputes arise between taxpayers and the department sometimes it takes time for litigation or for hearings and settling. In those cases the taxpayer knows that he is in suspense; but, in a general way, the audit is cleaned up before the next year's collection begins.

CHAIRMAN BULLOCK: Will Mr. Shaw tell us about the practice in Massachusetts?

MR. SHAW: I cannot say exactly what Mr. Ivins says, but perhaps I should mean the same thing if I said that we finish our audits every year. What we do is to carefully audit and assess and bill each return, going over the figures for mistakes, checking items that are in dispute, and handle some forty or fifty thousand pieces of correspondence on returns. But that is not what we call an audit. What we call an audit is going out to the taxpayer's place of business, or to his home, or calling him into the office and going over his whole situation, to see whether he has filed a return, showing all the income he should report. That is done in probably not

over 5,000 cases a year. However, we are limited to two years, and whatever we don't audit within two years of the date of the bill, we must let slide. For that reason the sword of Damocles is not hanging very long.

I should like, for the purposes of having it in the record, to call attention to Mr. Handy's widow—excuse me—the widow to whom Mr. Handy referred. Under the general property tax law she would have paid a tax upon the stock in question at the general rate in the town or city where she lived, under the general property tax. Under the income tax she would be entitled to an exemption of $300 of taxable income, leaving the balance to be taxed at six per cent.

Dr. Adams: I am very anxious to know what Mr. Ivins and Mr. Shaw and members of the Wisconsin commission think about the relation in their respective states between the personal income tax and the business income tax. Is it logical; is it a fair solution of that very difficult question, and do they see any better solution of that question? The problem I have in mind is this: You start out with a personal income tax, about which most of our discussion centers; you get perhaps a progressive income tax, applicable to individuals on their general income; you make that applicable to the earnings of sole proprietors and partnerships; then the question for us is, what about business in corporate form, and then the more difficult question, what of the dividend received from a corporation located in another state, and I regard that in many ways as the most difficult problem of income taxation. If these gentlemen have some contribution on that, I should particularly like to hear it.

Chairman Bullock: Mr. Ivins, will you tackle that problem first?

Mr. Ivins: Mr. President, if Senator Davenport is present, I think he would be a better man to speak for New York in that connection.

Chairman Bullock: Mr. Davenport has gone home. Mr. Ivins is alone in his glory.

Mr. Ivins: The committee of which Mr. Davenport is chairman has recommended changes in New York to meet the situation as it exists. We have a so-called corporation franchise tax, measured by income, at a 4½% rate. Individuals and partnerships pay a personal income tax of 1, 2 and 3%. In New York City, for example, we have Gimbel Brothers, Macy & Company—partnerships; and we have Saks & Company and Stern Brothers, corporations. The corporations are paying at the rate of 4½%, and their stockholders are paying 1, 2 and 3% on top of that, and the partnerships are paying just 1, 2 and 3%.

CHAIRMAN BULLOCK: Will you let me interrupt you with a question on that point? How about the stock-in-trade of the partnerships? Corporations are not taxable on their personal property, are they?

MR. IVINS: No.

CHAIRMAN BULLOCK: How about the partnership?

MR. IVINS: Their tangible personal property is subject to assessment on the assessment rolls, with the exception of a small portion of it. In New York City and in all but one or two of our larger cities there is practically no assessment of personal property of that nature. It does not get on the rolls. So Senator Davenport's committee introduced in the last legislature a bill providing for a business income tax on individuals and partnerships, which would put them in practically the same situation as the corporations, but the legislature did not pass the bills.

S. S. KALISHER of Pennsylvania: I should like, if I may be permitted, to supplement Mr. Ivins' suggestions with respect to amending the model tax acts, as submitted by the committee. This model tax act makes no reference to the application of net losses of one year to the net income of other years, as provided in the federal Revenue Act of 1921. The new law provides, as did the old law, but in a slightly different way, and with different limitations, for the application of net losses of one year to the net income of other years. The justice of this averaging up of incomes over a number of years has generally been recognized by business men and legislatures.

It follows, of course, somewhat in line with the averaging of the incomes in the English law. Net losses between October 31, 1918, and January 1, 1920, were taken care of under the old law by providing that the returns of years previous to that in which net losses were sustained, could be re-opened and that the net loss could be applied to such previous years' net income, and the tax for such previous years recalculated. Under the new act net losses for taxable years beginning after December 31, 1920 — and I am of course speaking of the 1921 federal income tax act—can be deducted from income of succeeding years. Net loss is the loss resulting from business operations only, including losses incurred in the sale of capital assets and used in business, over and above the sum of gross incomes, and so forth.

I therefore wish, if I may, to offer this suggestion to the committee, to make it a part of their consideration in compiling the new draft with respect to state income and franchise tax laws, either based on income direct or as a franchise tax based on net income.

WILLIAM H. KING of New York: The city government of New

York City, which I represent at the conference, was materially affected by the income tax law in New York State, as were all the other cities of the state. The New York law, it should be understood, is twofold. It relates to individual income tax and also to what is called a franchise tax on corporations, based on income. The personal income tax took from the city the right to tax any intangible property. It left the right to tax tangible property. The difficulty, however, there was that the legislature did not amend the law with respect to taxing tangible personal property which had previously existed and permitted deduction of indebtedness.

That was all right when the city taxed both the tangible and intangible, but by leaving provision for the deduction of indebtedness and providing that only tangible property could be taxed, the result was that taking out the deduction for indebtedness from the tangible property, only makes the tangible property tax a mere farce. That is illustrated every year, as people come in in great numbers to have it sworn off.

The city feels this with respect to tangible property. Non-revenue producing tangible personal property of individuals should bear a local tax, because it receives, entirely apart from state protection, city protection, for which moneys are expended every year in the budget—fire protection; police protection—and there is a great amount of that in New York City. By practically wiping it out, makes it all the more difficult for the city to meet its tax burdens, because it takes away a substantial and proper source of revenue for the city.

With respect to the tax on corporations, in the main the result was that corporations no longer pay a local tax. The change above noted affected of course what was formerly known as the capital stock and surplus tax on intangibles and on the actual properties; but the legislature went further and provided for taxing business corporations on their income, and provided that they should not be taxed on personal property, and then defined personal property to include, in addition to what is ordinarily regarded as personal property, machinery of corporations, substantially all the machinery which previously had been assessed as real estate. Therefore, the cities lost the tax on real estate as well as personal property, by the operation of the law.

These two things have a bearing upon the questions which are referred to in the program today, which have not yet been discussed, namely, the function of an income tax; its place in a system of taxation; how far it should supplement property taxation, and how far supplant it, and should the tangible property be continued at rates imposed on real estate? From the experience in New York City it seems clear that the function of an income tax should be to take over the tax previously imposed upon intangibles.

leaving the tangible personal property and the real estate subject to local taxation. Both of those classes receive local protection, and moreover, the fact that they are locally assessed keeps up the interest of the taxpayer in his city government, whereas with indirect taxation he loses that particular interest.

The real property tax we think should certainly be locally assessed, and in that it has a bearing on the report of Senator Davenport, providing for a tax on the earnings of public utilities as an exclusive tax, which would wipe out local assessments on real estate. These public utilities having large properties — office buildings; barns; and so forth—which receive local protection and should certainly be taxed locally.

With respect to tangible personal property, it seems clear that non-revenue producing tangible personal property of individuals would escape taxation entirely, unless it is locally assessed, and it is perfectly proper for local assessment, because it receives the protection and benefits by the expenditures of municipalities.

J. E. Brindley of Iowa: Senator Van Alstine, chairman of our special legislative tax commission, a few moments ago asked Judge Leser a question regarding the flat rate tax of Maryland. He opened up what with us in Iowa, for reasons so admirably expressed by Mr. Lord in his presidential address of last evening, is a very serious question, and I am sure I speak the mind of the members of our special commission who happen to be present.

We are much interested and hope to profit by this discussion. Of course, in brief remarks you cannot go into detail, but the situation is substantially this: In Maryland, as I recall, Judge, you stated that your rate on banks is 1% plus the state rate, is that correct?

Mr. Leser: That is right.

Mr. Brindley: What is the state rate?

Mr. Leser: Thirty-five cents on $100.

Mr. Brindley: Now, with us in Iowa, by law, the capital stock, surplus and undivided profits of banks is arbitrarily listed at 80% of its book value, and of course we have the one-quarter rule, which means one-quarter of that. Our supreme court has held that the power of the assessor is ministerial; that he cannot exercise any judgment as to any classes of property. The result is that the assessment of the capital stock, surplus and undivided profits of banks resolves itself merely into adding up a column of figures and signing on a dotted line. As a member of a city council, I will give you a personal experience, acting as a local board of review. About three or four years ago we very frankly recognized that we were listing property at not to exceed, at that time, 60% of a reasonable and fair value of the same, as that term is generally

understood. The matter of capital surplus and undivided profits, of course, was mentioned in the course of the review, but it was promptly dropped, because the law is mandatory. The result of that is—I believe in being fair to both sides to a controversy—the result of that is that there is and has been for several years a sincere feeling on the part of some of our bankers that there is a discrimination between the arbitrary 80% listing to which I have referred and the actual listing of local assessors of other classes of property. In that connection, however, I wish to be understood as expressing no personal opinion; I am merely stating to you the feeling and the facts.

The result of that situation, as it relates to the Richmond decision, is this: The average rate of taxation on the capital surplus and undivided profits of banks in Iowa varies from, we will say, three to five per cent, as contrasted with your rates, Judge Leser. For example, in the city of Ames, our rate was 234.5 mills this year. Of course, you must bear in mind that the listing, as I have explained, is not at full value, and that we have the one-quarter assessment value; and you must bear in mind also the 80% provision; but when you bear in mind that banks at Ames pay a rate of 4.6%—I am figuring the thing up in my mind, now—the result is that with the Richmond decision a very serious situation has arisen which I fear may result in the repeal of the flat rate on moneys and credits, which has been in operation since 1911, and which has greatly increased the listing of that class of property and increased the revenue. It is a very serious situation and it is in that connection that our legislative commission is considering the preparation of a bill for a personal income tax, to take the place of the present flat system, and to present it to the next general assembly.

CHAIRMAN BULLOCK: The gentleman has one minute more.

MR. BRINDLEY: Before I sit down I want to state that I am not passing any opinions on the merits of this case at all, but I am merely calling your attention to what, with the Richmond decision as it stands, with the rate as it stands, and with the flat rate of five mills, we are up against. How it will come out, I don't know. I personally am very strongly in favor of such an income tax as they have in either Wisconsin or New York, rather than our flat rate on credits, and it is needless to say our flat rate on credits is for obvious reasons infinitely superior to the old general property tax, which was impossible.

CHAIRMAN BULLOCK: I should like to say a word. If Auditor General Lewis of Pennsylvania is now in the room, I should like him to tell us very briefly something about the Pennsylvania situation with respect to the taxation of intangibles. We have not yet heard from Pennsylvania. Is Mr. Lewis still here?

SAMUEL S. LEWIS of Pennsylvania: Mr. Chairman, I just came in the room, so that I am not familiar with the subject under discussion.

CHAIRMAN BULLOCK: The matter of your four mill tax on personal property — moneys and credits — and foreign corporation stocks, and corporation bond issues, and so forth.

MR. LEWIS: As I stated before, I am not familiar with the particular subject under discussion, and our method of taxation in Pennsylvania is so different from that in any of the other states, that really I have hesitated even to enter into these discussions. I came here more to be a listener than anything else.

In the first place, we have no direct property tax in Pennsylvania, that is, for state purposes. Eighty-five per cent of our revenues for state purposes comes from corporations. We levy a capital stock tax on all corporations—both foreign and domestic. The tax is upon the value of the capital stock. The method of arriving at the value of capital stock is determined by an act of the assembly and is very elastic. The tax is five mills on the value of the capital stock, which can be ascertained in three different ways; the selling price of the stock; the capitalization of the net income, and by taking into consideration the assets and the liabilities and the value of the franchise.

I might say that in the capital stock tax the manufacturers are exempt from taxation on that part of their capital that is employed exclusively in manufacuring, whether it be a foreign corporation or a domestic corporation. We also have what is called a loans tax.

We collect about fifteen millions — I did not anticipate being called on, so I am talking at random—we collect in the neighborhood of fifteen millions of dollars in the capital stock tax from our corporations. There are about 25,000 corporations which report annually to the auditor general. They make a capital stock tax report, a loans tax report, a gross receipts tax report and a bonus tax report, so that in all the auditor general has to make in the neighborhood of 60,000 settlements in the corporation bureau alone. That is exclusive of the 120,000 reports from gasoline dealers, so you see he has no little task.

In the loans tax I can only skim over the work. The rate is four mills on obligations held by residents of Pennsylvania. The theory is that the treasurer of the corporation acts as the agent of the commonwealth, to deduct the taxes. From that source we collect in the neighborhood of about four and one-half million dollars. You can see that with a domestic corporation the commonwealth or the auditor general has control over the agent or the treasurer of the corporation, but with a foreign corporation, where the treasurer is a non-resident, we have no control, and the result is

that the commonwealth loses the tax on the obligations held by non-residents where the treasurer of the corporation is a non-resident.

We also have a tax on both domestic and foreign corporations, which is more in the nature of a license and bonus, which is one-third of one per cent on domestic corporations—one-third of one per cent of the actual capital stock issued. Foreign corporations file an initial bonus report and pay one-third of one per cent on the actual amount of money invested in Pennsylvania. Of course, that only includes the tangibles. Each year the foreign corporations are compelled to file a bonus report, if in the succeeding year, after having filed the initial report, they have a larger amount invested in tangible properties. We collect the difference in the way of bonus over the amount previously paid on.

We also have what we call the gross receipts tax. We collect several millions of dollars from the public utilities. They pay, as I said before, a capital stock tax; the bonus tax; the loans tax, and we collect eight mills from transportation companies on receipts derived from transportation of freight and passengers; and also from telegraph and telephone and electric light companies.

We also have what some states call the sales tax. We have a mercantile tax that has been in operation in Pennsylvania for a period of at least twenty-five years. Retail merchants we tax at a flat rate of $2, and a mill on each dollar of their gross sales. Wholesalers we tax at a $3 flat rate and one-half mill on their gross sales. We have a gasoline tax, which is one cent a gallon on the gasoline sold, not for re-sale, and I would say to any of the states who are about to tax gasoline, don't model it after the Pennsylvania act. The dealers are required to report monthly to the auditor general and to make affidavit to the reports. Now we have in the neighborhood of 20,000 gasoline dealers reporting to the general auditor's office every month, twelve months in the year, and that is 120,000 reports. Figured roughly, it is costing gasoline dealers $120,000 a year for notary fees. The fee is fixed at fifty cents, which amounts to $120,000 for the year.

We have what you no doubt have all heard of and read about in the newspapers, the anthracite coal tax, which is 1½% on the price of the anthracite or hard coal at the mines. As I stated before, we have no direct state property tax. Practically all of our taxes are collected from corporations.

In addition to the above, it is incumbent upon the auditor general to collect what is called the transfer inheritance tax, which is a combination of the direct inheritance tax and the collateral inheritance tax. The direct inheritance tax is 2%; the collateral is 10%. Under our constitution we cannot allow any exemptions. We are now endeavoring to pass a constitutional amendment to

permit of exemptions. I shall be glad to answer any questions. I came here entirely unprepared to make an address; in fact, I felt that our system of taxation was so entirely different from other states that I did not want to get into the discussion.

CHAIRMAN BULLOCK: Gentlemen, it is twelve o'clock, and the hour for luncheon is set at 12:15. After presenting one matter of business, I shall then present to the session the question of whether they wish to continue or adjourn.

Mr. Holcomb has given me an interesting little article by Mr. Fertig, the assistant director of the legislative reference bureau at Harrisburg, about this Pennsylvania tax on intangibles. On the secretary's suggestion that it need not be read, but that it would be an instructive and helpful thing to have published in the volume of proceedings, is there any objection to receiving it and turning it over to our secretary for publication in the volume of proceedings?

(No response)

CHAIRMAN BULLOCK: If there is no objection, I will not put the motion.

(The article referred to is as follows.—Ed.)

THE PENNSYLVANIA TAX ON INTANGIBLES

J. H. FERTIG

Assistant Director, Legislative Reference Bureau of Pennsylvania

Since the passage of the act of June 17, 1913, P. L. 507, most of the Pennsylvania tax on intangibles is devoted to county purposes, except in Philadelphia, where the county and city are co-extensive. Here the tax is a city tax.

The tax imposed is at the rate of four mills on each dollar of the value of the subject made taxable, and is payable by the person, partnership, association, company or corporation owning, holding or possessing the subject of taxation.

The following subjects are made taxable under the act:

(1) All mortgages, except (a) such as are issued by, or payment thereof assumed by, any private corporation, and (b) such as are owned in their own right by any private corporation, limited partnership or joint stock association. Mortgages coming within exception (a) are taxable for state purposes under the corporate loans tax. Those coming within exception (b) are considered assets of the corporation, etc., and are included in ascertaining the actual value of capital stock, when assessing the capital stock tax for state purposes.

(2) All moneys owing by solvent debtors, whether by promissory note, or penal or single bill, bond or judgment, except as excepted in (1), and except (c) bank notes, and (d) notes discounted or negotiated by banking institutions.

(3) All articles of agreement and accounts bearing interest, except as excepted in (1).

(4) All public loans except (a) those issued by the commonwealth, or the United States, and (b) those made taxable for state purposes. The public loans taxable for state purposes are such as are issued by municipal, school and poor districts, and counties of the commonwealth. The public loans taxable under this clause would be such as are issued by other states, territories and foreign governments or by municipal units thereof. The tax could not be imposed upon public loans owned in their own right by private corporations, limited partnerships and joint stock associations liable to a tax on capital stock.

(5) All loans issued by any domestic or foreign corporation, association, company or limited partnership, including car-trust securities and loans secured by bonds or any other evidences of indebtedness, whether the interest be included in the principal of the obligation or payable by the terms thereof, except (a) such loans as are made taxable for state purposes. The exception includes scrip, bonds, certificates and evidences of indebtedness issued or assumed by private domestic and foreign corporations. These loans are subject to the payment of the state tax on loans. The obligations taxable under the act would be such as are issued by domestic and foreign associations, limited partnerships and unincorporated companies, and by foreign corporations not doing business in Pennsylvania and having no office in Pennsylvania or resident treasurer from whom a state tax might be collected. The tax could not be imposed upon obligations owned in their own right by private corporations, limited partnerships and joint stock associations liable to a tax on their capital stock.

(6) All shares of stock in any domestic or foreign bank, corporation, association, company or limited partnership except banks, corporations, and limited partnerships (a) liable to a tax on capital stock, or (b) relieved from payment of tax on capital stock.

The effect of this clause is to make taxable shares of stock of foreign corporations, associations, companies and limited partnerships not doing business in Pennsylvania, but does not include shares of stock of foreign corporations, associations, companies and limited partnerships engaged in manufacturing or laundering. Companies engaged in manufacturing and laundering are relieved from tax on capital stock by express provision.

(7) All moneys loaned or invested in other states, territories and foreign countries. This would not include investments by private corporations, limited partnerships and joint stock associations liable to a state tax upon capital stock.

(8) All other moneyed capital in the hands of individual citizens of the state.

(9) All annuities yielding annually over two hundred dollars.

(10) All stages, omnibuses, hacks, cabs and other vehicles used in transporting passengers for hire, except steam and street passenger railway cars.

Excepted generally from the provisions of the act are building and loan associations and savings banks having no capital stock, fire companies, firemen's relief associations, life or fire insurance companies having no capital stock, secret and beneficial societies, labor unions, labor-union relief associations and beneficial organizations paying sick or death benefits.

The above enumeration of the subjects of taxation does not follow the language of the act, but is an attempt to show the practical effect of its provisions. The provisions of the act are very much involved, due in large measure to the retention by the state of the tax of four mills upon scrip, bonds, certificates and evidences of indebtedness issued and assumed by domestic and foreign corporations and issued by municipal, school and poor districts and counties of the state. It is further involved by the exemption of assets in the form of bonds, etc., of corporations, limited partnerships and joint stock associations liable to a state tax on capital stock, and by the exemption of manufacturing and laundering companies from the payment of a state tax on capital stock.

The law could be much simplified by a return to the system existing prior to 1913, whereby the state collected this entire tax and returned part thereof to the counties.

The law presumes that every taxable should make an annual return under oath of the subjects in his possession liable to the tax, and special printed forms are furnished for this purpose. However, there is gross negligence on the part of the taxing authorities in checking up returns, and many false returns are either deliberately or inadvertently made.

Practically no returns are secured showing interest bearing bank deposits, such as savings accounts and certificates of deposits, because taxing authorities have no access to bank records, and banks are in the habit of advising depositors that they are not liable to the payment of the tax.

The following table shows the yield from this tax to the several counties for the year 1921:

County	*Population*	*Assessed Valuation*	*Yield*
Adams	34,583	$5,696,987	$22,787 95
Allegheny	1,185,808	440,594,791	1,762,379.12
Armstrong	75,568	3,579,086	14,316.40
Beaver	111,621	8,903,004	35,612.00
Bedford	38,277	3,789,169	15,156.67
Berks	200,854	46,032,723	184,130.99
Blair	128,334	14,371,718	57,487.08

Bradford	53,166	5,741,657	22,966.54
Bucks	82,476	16,483,151	65,932.60
Butler	77,270	10,833,309	44,764.17
Cambria	197,839	9,809,465	39,237.86
Cameron	6,297	407,145	1,628.58
Carbon	62,565	2,314,558	9,258.23
Centre	44,304	4,856,725	20,171.81
Chester	115,120	25,969,646	103,878.58
Clarion	36,170	5,343,916	21,375.47
Clearfield	103,236	5,035,751	20,143.04
Clinton	33,555	2,319,455	9,277.82
Columbia	48,349	1,898,673	7,594.69
Crawford	60,667	1,400,321	37,601.28
Cumberland	58,578	6,447,348	25,789.37
Dauphin	153,116	21,544,280	85,177.12
Delaware	173,084	37,646,052	150,208 03
Elk	34,981	771,021	3,084.09
Erie	153,536	23,229,763	92,919.05
Fayette	188,104	13,876,339	55,505.35
Forest	7,477	427,883	1,711.53
Franklin	62,275	9,717,954	38,871.82
Fulton	9,617	248,141	992.55
Greene	30,804	4,098,688	16,394.74
Huntingdon	39,848	2,649,333	10,579.17
Indiana	80,910	4,885,710	19,490.24
Jefferson	62,104	5,213,536	20.854 14
Juniata	14,464	1,306,932	5,227.79
Lackawanna	286,311	17,468,366	69,873.42
Lancaster	173,797	39,340,728	157 342.95
Lawrence	85,545	11,457,675	45,830.70
Lebanon	63,152	10,544,738	42,178.95
Lehigh	148,101	31,470,930	125 833 72
Luzerne	390,991	35,159,143	140,639.50
Lycoming	83,100	12,819,259	51,276 89
McKean	48,934	6,105,014	27,620.10
Mercer	93,788	9,252,692	37 010.77
Mifflin	31,439	2,129,706	8 518.80
Monroe	24,295	3,397,416	13,589.66
Montgomery	199,310	141,935,813	567,743.24
Montour	14,080	719,071	2,876.23
Northampton	153,506	27,926,561	111,706.24
Northumberland	122,079	6,141,231	24,564 93
Perry	22,875	1,204,610	4,818.44
Philadelphia	1,823,779	707,793,316	2,831,173.21
Pike	6,818	754,362	3 017.45
Potter	21,089	2,227,022	8 977.27
Schuylkill	217,754	9,090,970	36,363.88
Snyder	17,129	1,438,710	5,754.85
Somerset	82,112	12,115,388	60,056.07
Sullivan	9,520	434,646	1,738.54
Susquehanna	34,763	3,005,217	12,020.87

County	*Population*	*Assessed Valuation*	*Yield*
Tioga	37,118	4,258,406	17,033.66
Union	15,850	1,600,062	6,400.24
Venango	59,184	22,788,621	91,154.49
Warren	40,024	4,752,593	19,010.55
Washington	188,992	27,364,798	109,458.13
Wayne	27,435	1,160,559	4,642.25
Westmoreland	273,568	19,377,594	75,445.57
Wyoming	14,101	1,697,235	6,788.96
York	144,521	26,525,606	106,102.41
Total		$1,959,702,288	$7,850,118.81

A study of this table shows that the law is administered with more success in some counties than in others. The following will serve as an illustration. Some allowance is to be made for difference in wealth of communities; especially is this true of Montgomery County:

County	*Population*	*Assessed Valuation*	*Yield*
Lancaster	173,979	$39,340,728	$157,342.95
Montgomery	199,310	141,935,813	567,743.24
Berks	200,854	46,032,723	184,130.99
Schuylkill	217,754	9,090,970	36,363.88
Lackawanna	286,311	17,468,366	69,873.42
Luzerne	390,991	35,159,143	140,639.50

The amounts secured by the State of Pennsylvania for the year 1921 from this tax on intangibles is as follows:

(a) From scrip, bonds, certificates, and evidences of indebtedness, issued or assumed by private domestic and foreign corporations	$4,490,890.09
(b) From scrip, bonds, certificates, and evidences of indebtedness, issued by counties, cities, boroughs, townships, school districts and incorporated districts	786,292.01
Total	$5,277,182.10

The tax upon indebtedness of private corporations is collected directly from the corporation and not from the individual owning the security. It can, therefore, be accurately collected. In the case of the indebtedness of municipal districts the tax is collectible in the first instance from the holder, except where the indebtedness is issued free and clear of all taxation, in which case it is payable by the district. Practically all municipal bonds in Pennsylvania are issued free and clear of all taxation.

Pennsylvania is not in a position to discontinue this tax on intangibles and to adopt in its stead the income tax. While our con-

stitution permits classification of subjects of taxation, it at the same time prohibits the granting of exemptions. Until such time as a constituional amendment is adopted, the tax on intangibles must be continued.

The combined state and local revenue from this tax for the year 1921 exceeded $13,000,000. If the language of the act were simplified so that the ordinary citizen might comprehend its provisions; if banks were forced to disclose interest-bearing accounts, and if taxing authorities were diligent in checking up returns, there is no reason why the total income from this source should not reach $20,000,000 a year.

[The following statistics received from Chairman Beck of the Maryland State Tax Commission are included as of interest.—Ed.]

The Maryland Intangible Property Tax Law

Statement by W. W. Beck, chairman State Tax Commission of Maryland

1. The intangible property classification tax in the State of Maryland is 45c. per $100.00 (30c. for local purposes and 15c. for state purposes).

2. The tax is imposed upon the following property, providing it be dividend or interest bearing:

> "All bonds, certificates of indebtedness or evidence of debt in whatsoever form made or issued by any public or private corporation incorporated by this State or any other State, territory, district or foreign country, or issued by any State (except the State of Maryland), territory, district or foreign country not exempt from taxation by the laws of this State, and owned by residents of Maryland, shall be subject to valuation and assessment to the owners thereof in the county or city in which such owners may respectively reside, and they shall be assessed at their actual value in the market. . . . All shares of stock or shares in any bank other than a national bank, or in any company or corporation incorporated by or located in and doing business in any other State, or District of Columbia, or in any territory or foreign country owned by residents of this State, shall be valued and assessed for the purposes of State, county and municipal taxation to the owners thereof in the county or city in which such owners may reside, and said shares shall be assessed and valued at their actual value in the market."

3. The total assessment on securities for the year ending 1921 was $273,218,009.

4. The classified tax in the State of Maryland certainly has met all expectations.

CHAIRMAN BULLOCK (continuing): Then do you decide to adjourn at this time and go to the luncheon which we have about ten minutes to reach, or to continue?

CAPTAIN W. P. WHITE: Move we adjourn.

CHAIRMAN BULLOCK: I want to announce merely that the luncheon will be held at Donaldson's Tea Room, on Sixth street and Nicolet avenue, in the department store.

I won't put the motion. The session is adjourned.

(Adjournment)

NINTH SESSION

Thursday Afternoon, September 21, 1922

Chairman Lord: I will read a telegram addressed to the president of the National Tax Association:

(Reading)

"The Santa Fe chamber of commerce extends to your association its most cordial invitation to hold the next annual convention in this ancient capital. Ample facilities and hotel accommodations will be at the disposal of delegates. Two new modern hotels will soon be open. Please confer with J. E. Saint, chairman of the New Mexico tax commission. Santa Fe is the center of the foremost one hundred miles square in America. The business of the convention having been transacted, it affords to delegates opportunities not found elsewhere."

[Signed] Santa Fe Chamber of Commerce
Walter D. Danburg, *Secretary.*

Douglas Sutherland of Illinois: While the delegates are assembling for the afternoon session, I should like to suggest for the consideration of the resolutions committee a reference to the appropriate committee having charge of the modification of the model tax law, the consideration of this question: Is there a relationship between the tax upon income and the tax by value upon property, other than the relationship which was suggested at the morning session, as to the proportion of revenue raised through income tax, in comparison with the proportion of revenue raised by the general property tax?

I raise that question because we found rather an interesting situation in our Illinois constitutional convention. A school of thought developed that there was a relationship between the two taxes, other than merely the proportion of revenue raised by the income tax, and an attempt was made to write into the constitution a definite ratio between the rate of income tax and the rate of property tax. The rate suggested was that the rate of taxation on income should never be less than fifteen times the current rate of tax on real property. That was aimed at intangibles. It was suggested with all seriousness by some of the delegates. It did not get very far, but there is a vestige of the suggestion left in our constitution as it goes to the people. We provide for one kind of tax on income derived from intangibles, which tax must be real

and substantial. As originally brought in, the language read that this tax should be substantially proportioned to the tax upon real estate; now it simply reads that it shall be real and substantial and a uniform tax. We provide also that there may be a general income tax, with deductions from this tax for the general property tax. I think a law can be worked out under our constitution, but it raises an unusual question.

CHAIRMAN LORD: I would suggest that you write Dr. Bullock, giving him the same suggestion you make here now, so that the committee may have that matter in mind definitely when they meet to review and revise that report.

MR. BURNHAM: In line with the publicity campaign, it seems advisable to offer this resolution.

(Reads resolution)

CHAIRMAN LORD: The resolution will be referred to the committee on resolutions for its consideration. The chairman is not here, and if there is any other member of the committee who is sure to meet with them, I should like to have him take this resolution.

We had the pleasure this morning of listening to a very eminent university professor, Dr. Bullock of Harvard, the oldest university in the country, and I am going to call to the chair this afternoon an eminent teacher from one of the largest institutions of learning in America, Dr. Haig of Columbia University. Dr. Haig has done a great deal of constructive work in the matter of taxation, has made a great many very useful investigations, very valuable investigations indeed. Most of you are acquainted with him, I am sure, by reputation if you have not had the pleasure of meeting him, but in order that you may see him in action I am going to call him to preside at the meeting this afternoon.

ROBERT MURRAY HAIG presiding.

CHAIRMAN HAIG: I wish I could persuade my friend Mr. Lord to make that address to the trustees of Columbia University. They might not think it was all true, but it was all right with me I am sure.

The program this afternoon carries two items only, an address by Dr. Adams on how federal taxes are made, and the report of the committee of the association dealing with bank taxation.

I think that the preliminary program that was issued by the secretary of the association carried a much more interesting item with reference to the address that we are about to hear than that which appears on the official program that you have before you. This reads "How federal taxes are made, Thomas S. Adams, Yale University." The preliminary announcement read "How federal

taxes are made by Dr. T. S. Adams of Yale University." I don't know which subject is to be discussed this afternoon. I am sure we shall be very much interested in either. I do want to say that I think we have cause to be profoundly grateful for the part which Professor Adams has played in our nation's financial history in the past few years. I think it is of greater significance than many of us realize. We went into this great war unprepared in many ways, but nowhere were we more completely unprepared than on the financial side. It is almost unbelievable to anyone who is familiar with the methods by which great nations regulate and control their finances that there could be the almost complete separation which did exist, between the administrative and the legislative branches of our government at the time the war was declared. In order to solve the problem acceptably it is necessary that there be the most intimate, kindly understanding and cooperation between the two branches. Instead of that, those of us who knew the facts knew that there was suspicion and jealousy and absolute lack of co-operation between the administration, the treasury department and Congress. We also know today that that condition no longer exists.

We have not amended the Constitution. We have made no great change in the formal organization of our government, but nevertheless what amounts to a revolution has actually taken place. The administration is now depended upon to provide a considerable amount of the initiative and a very large portion of the guidance during the course of preparation of financial measures. Now, that is a tremendous change, and that change is due almost entirely to Dr. Adams.

It has been a very fortunate thing for America that when we had to face these very difficult problems, we had a man on the job who had the necessary knowledge and ability and willingness to sacrifice himself, and step into the breach and meet the situation.

Everyone knows that federal tax laws are not entirely satisfactory, but I think that in this case we can reverse the statement that often appears in a preface, where an author says that any merits that the volume may possess are due to the excellent suggestions of his critics, and all errors are due to his own lack of foresight and judgment. In this case anything that is bad in federal laws is there over the protest of Dr. Adams, and much of what is good is there due to the fact that he has been present at Washington.—Dr. Adams.

Dr. Thomas S. Adams: I don't know whether I should begin a serious discussion with a story, but Professor Haig's very kindly introduction makes me feel like the very belligerent gentleman who got religion on one occasion. He had a feud of long standing with an ancient enemy, and the day after he got religion he met

him on the street and said: "Jim, I got religion last night, and I feel so darned humble this morning I would shake hands with a dog." He says, "Shake". I feel somewhat in that mood.

A certain traveler, according to a recent story, being examined by an immigration official or passport officer, when asked about himself, described himself as a realist, a pragmatist and an optimist. I want to approach this subject somewhat from that viewpoint. I hope I shall approach it realistically, with a recognition of the real difficulties and real problems, and I want to approach it pragmatically in the sense of finding something that will help a little, and I believe, in accordance with my experience at least, it may be approached optimistically; that it is capable of some improvement.

It is hardly necessary before this audience to describe in any detail the actual processes and machinery of federal tax-making. I don't expect to go through with any such description. As I think over the way federal tax laws are made, a very marked sin of omission comes first to my mind. I think there could have been a great improvement if we could have had in recent years a thoroughgoing preliminary examination of these subjects by a legislative commission. The best tax laws that have been made by the states in recent years have been preceded by, and in a large sense are due to, thoroughgoing studies by commission in advance — legislative commissions or mixed commissions. That has been almost entirely absent in the making of federal tax laws and its omission or absence has been, I think, a serious error.

One understands the pessimism of Congress about commissions. I tried particularly hard to get the appointment of such a commission at the last session, in which important revenue legislation was adopted. The members of Congress were not hostile but they were blasé; they said, "We will not get anything out of a congressional commission that is worth while." I think that is hardly true. Most of our congressional commissions have perhaps fizzled, but there are some notable exceptions. A very great and enduring result followed from the Aldrich commission, which investigated banking and currency; representative Anderson's commission on agricultural inquiry, turned in a report which will have very real effect; and I believe at the particular juncture a congressional commission would have greatly improved the situation. However, it was not authorized.

Speaking about the mechanics and the processes, there has been far too much haste in federal tax-making; not so much as a mere matter of actual time, but in the mental attitude. The recent bills have stayed in committees five and six months or more, but from the very beginning, considering the magnitude of the task and the almost infinitude of the detail involved, it has been a question of

drive and haste. The attitude of the average member of Congress has been—"We must get by with this some way." That has been unfortunate.

Looking to the mechanical processes involved, I have no particular criticisms to offer. In recent years the treasury department has honestly and industriously attempted to collect advice, criticisms and suggestions of the men in this country who were seriously enough interested to make constructive suggestions. These have been studied and absorbed. Whether all the wisdom that they had was utilized is another question, but they have not been neglected, and a serious effort has been made to get from people who think effectively and constructively on these matters real suggestions.

The federal department has gone out—particularly in the construction of the last tax bill—and has sought earnestly the advice of those people who make a serious study of these questions. As Professor Haig said, in recent years the suggestions of the treasury department, put in concrete, definite form—that is to say, in the form of proposed legislation, with the details worked out — have had the most sympathetic, serious attention of the committees of Congress. That situation I think could hardly be improved. The ways and means committee obviously does not take its tax measures from the treasury department. It exercises its own independent judgment, as it must, as it should; but it does sympathetically and seriously consider the suggestions which the department has to make.

In the practical formulation of the bills the various committees have had expert assistance of what seems to me the highest order. The two legislative draftsmen—Mr. John E. Walker in the senate and Mr. Middleton Beaman in the house — are two men who I know could not be improved upon; they are highly qualified to work in this kind of work, and that work is important. The revenue bills have been formulated by the legislative draftsmen of the two houses, working together and dividing the work. So far as the actual technical legislative drafting is concerned, I don't know how that could be greatly improved upon.

So much then for a part of the work which in my opinion you are either familiar with or can by imagination, by reason of your familiarity with state legislative processes, easily appreciate and understand. The legislative treatment of these tax bills has been much as you would expect. In many ways Congress has shown in recent years a rather unusual and striking desire—in my opinion, an intent, a spirit—to deal soundly, fairly, equitably, and in accordance with statesmanlike ideas. I think if you took the revenue act, for instance, of 1921, and took its provisions one by one and compared them with earlier acts, you could mark a very striking progress in what might be called the legislative attitude, which has

developed. Take, for instance, the net losses provision—the provision permitting the taxpayer to take the loss of one year and offset it against the profits of another—when I first proposed it to Congress it was received almost with derision. It is now the law of the land. Take that extraordinary provision by which federal taxpayers are authorized to deduct dollar for dollar against their income and profits tax the taxes paid abroad. If you will think a moment of the spirit of such a provision, you will see that a few years ago it would have been almost impossible to secure it. Or take again, on the opposite side, the attitude of Congress towards gifts—the attempt to correct that very serious defect working against the government. The provision which was adopted may be wise or unwise; it was adopted rather against the personal inclinations of the members of Congress, in an honest attempt to fill a big hole in the federal tax law. So I might go on, almost indefinitely, showing evidence of what I might call a nice regard for the equities of tax-making. That seems to me fine, and to be on the whole, typical of the spirit in which federal tax laws have recently been adopted.

There are, of course, a number of instances, I think, of rather obvious political hypocrisy creeping into the tax bill. To use the popular phrase "boneheaded plays", I have seen many made, and lots of grandstand plays, and lots of instances of rather raw, slapstick work — legislative vaudeville — not lots of them, but some. For instance, take the so-called luxury taxes—taxes on fancy vests and trousers, that cost more than a certain amount, a provision of the law which worked very badly. That got into the federal tax laws in this manner: President Wilson recommended, and struck, properly I think, a sympathetic note in every heart, that during the war we ought to have taxes on luxuries. A very able sub-committee proceeded to investigate the question of taxing luxuries. With the best intentions in the world, they really concluded, down at bottom, that the thing was rather impracticable; that the gain was not worth the candle; that the tax was not, as things go, a practical tax. But public sentiment was strong, so a little arrangement was made—a gentlemen's agreement—that a luxury tax schedule should be adopted in the House bill, and that the Senate committee would kill it. That was definitely understood. Well; the program went along very nicely. The House adopted it; the Senate committee killed it, but some senator, noticing on the floor of the senate the omission of this luxury schedule, expressed his opinion that the senate bill, while very much superior to the house bill, was obviously unfair in one respect; it had no luxury tax; so he proposed, as an amendment to the senate bill, the luxury tax schedule. The bill was adopted and passed, as amended. This was not in conference and could not be taken out in conference and is in the tax law, in modified form, to this day.

Another illustration of something of the same kind: In the revenue bill of 1917 the principal chairman in charge was, on the whole, not in favor of federal estate or inheritance taxes, and particularly was not in favor of increased estate or inheritance taxes, but he was a canny gentleman, and he knew that there were in the senate committee, and that there would be in conference as confrerees a number of gentlemen opposed to federal inheritance taxation. He wanted some material with which to trade, so he voted, against his own convictions, I have heard him say, for increased rates, in order to sell it for something later on. Curiously enough, however, in the midst of the war, the senators in question sacrificed their own convictions and did not ask that the estate tax rates be reduced, and that is the explanation of the increase in the estate tax rates, in the bill of 1917. They were higher than the rates which we have today, by the way, as they were put in to trade with, but the other fellow never asked for any trade. Those things happen.

I might name many minor matters, and particularly, if I wished to violate certain confidential relations, I could say some things on important sections in which I think rather more sinister influences have been at work. There have been trades and deals between factions, in one or two places, where I think personal influence, in connection with an important legislator, of certain groups—certain interests—has been abused. I can get quite indignant over some of these things; but on the whole, they are minor episodes, they are relatively few in number, and looking at the revenue act as a whole, they are almost negligible. The spirit in which this legislation has been adopted—the intent behind it—the endeavor and the desire—have been, as I see it, almost as good as could possibly be expected, considering the political conditions under which we live and under which these laws are made.

I want to say here just a word about criticisms of federal tax laws, which are so frequent, and which frequently contain so much truth. Political economists, professional tax experts, business men, citizens generally, at times criticize these tax laws very bitterly. Many of these criticisms are entirely sound, but a very great many of them are based upon facts which, to my personal knowledge, were fully in the possession of the members of Congress who participated most actively and effectively in the making of the laws. Usually the critic believes—and I have heard them so state many times—that Congress or the members of the committees don't know these things. Now, in many of such instances, to my personal knowledge those facts were fully before the members of the committee. The difficulty was that they were also in possession of other and conflicting facts. There have been, furthermore, very many instances in which rather over-sure and over-confident critics

have assumed a certain superiority towards the committees, which the fundamental facts did not justify. The committee heard their case; assimilated their argument; and were familiar with their facts. They also heard other arguments; familiarized themselves with conflicting facts, which cut under and were deeper, in my opinion, than those of the critic.

Nevertheless, despite these things, the federal tax laws are very obviously characterized by very grave defects—very grave evils—and my principal object in discussing this question is to try to find out to what extent and in what manner, if at all, they may be remedied.

I shall reserve what seems to be the principal desideratum—if I may use that word in this connection—for the last; omitting that, it seems to me that perhaps the first condition to secure in this regard is a very frank and full admission and realization, on the part of everybody, that the making of tax laws is, down at bottom, essentially a political task. In any event, that is something that has grown on me with the passage of years. Tax laws, on the whole, in their fundamental structure—I don't mean in their detail but in their fundamental structure, and in the big things to which we object and where the deepest defects lie—are not made, in the ordinary sense; they grow out of a certain political soil, which may be enriched, which may be improved, and made to yield a better crop of tax laws, but which has, despite that, in my opinion, and in the words of the economist, certain indestructible and inalienable elements which cannot very easily be changed.

There are, obviously, certain political hypocrisies which can be remedied. Members of Congress frequently vote, not for the best interests of their constituents, not for some measure which will really benefit the people that they represent, but to satisfy some passing whim, or in obedience to some misapprehension. Thus, the situation can be remedied by education, by discussion. There is, of course, a great deal of political misinformation about. Very frequently men, intent only on serving their own interests in their attitude towards proposed tax changes, do not reason accurately: they do not proceed straight from premise to conclusion. That sort of thing may be corrected by education and discussion. But down at bottom there is a deeper truth, which is that in certain fundamentals no amount of education, no amount of discussion, no amount of expert advice can take the place of that political pull and haul, that tug of interests, that clash of sections, that showdown of strength, which is political. The only thing we can do, in my opinion, is to accommodate ourselves to it. In other words, there are certain of these things that some of us regard as defects, which are going to remain in the tax laws, as long as we remain in the minority. Despite that fact, my experience in the making of

tax laws has left me, as I said at the beginning, a profound optimist. I have been impressed, not with the things that cannot be changed but with the things that may be changed. I have seen proposal after proposal come before Congress, to be either openly scoffed at or politely sneered down, and be revived at later sessions, as proposals of the men who were originally their most hostile critics. Education can do a very great deal, and I am inclined to think that in one sense it is the only hope for improved tax-making that is very greatly worth consideration.

I want to stop just here to illustrate the difference between those things which, in my opinion, may be corrected, and those which will have to be endured.

Take this question of the income tax rates: we have income tax rates running up to 58%, as you know, in the federal income tax. I personally believe, and I think the majority of you believe, that with $15,000,000,000 or more of tax-free securities outstanding, and the impossibility of changing that in the near future, even by constitutional amendment, income tax rates which run to 58% defeat themselves. Take the viewpoint of those people who believe in exceedingly high income taxes; reasoning from their standpoint; striving to achieve the object which they want to achieve, it seems to me almost demonstrable that you would get better results if those rates were reduced. In my opinion, an income tax with rates of 58%, under existing political conditions, with fifteen billions of tax-free securities outstanding, is inevitably riding to a fall. Speaking dispassionately, and if I may say so, as a tax expert, they are almost certain to demoralize a great tax. We are going to discredit, in my opinion, the federal income tax. Now, I don't want to try to prove that point, but let us assume it to be true, for the purpose of the argument. If it be true, the sort of people who believe in highly progressive income taxes, can be persuaded. If I can summon a convincing argument, and if I have the facts—the truth—I can convince them in time, and that can be changed. Education will tell there.

But, gentlemen, there is another side of income taxation, which I don't believe is susceptible of ordinary discussion and definition. The federal income tax, as we have it, as I said yesterday, is a class tax of the most extreme form. It touches directly perhaps only five or six per cent of the population, and that is a grave defect. But it is not going to be cured, in my opinion. That goes back to the underlying things which discussion is not going to change in a few years. That is a result of non-physical forces, in my opinion. We have, as you know, a very strikingly unequal distribution of wealth and income in this country; so striking that every time I go over the statistics, they scare me. I believe that this tends to encourage a highly progressive income tax, or something which

will do the same work; an effort crude perhaps, but inevitably designed somehow to limit or ameliorate that difference in the distribution of wealth. I should not be surprised if it would develop that fiscal legislation of this kind—highly progressive income taxes—is the very price we must pay for the preservation of our economic institutions and industrial processes, which result in such striking inequalities. Let us assume industrial processes and economic institutions are good, and that they are beneficent. Now, if they result in the distribution of wealth and income as it exists today, then there are inevitably going to be efforts to ameliorate and correct those results. I don't believe that any amount of discussion of the class character of income taxes, or any amount of stressing the fact that they touch five per cent, is going to persuade the ninety-five per cent not to employ them.

That illustrates the difference; that illustrates realistic facts which I think we must accept, and which personally I have no hope of ever seeing cured. The effort to get surtax rates which will serve truly and effectively the purposes of the people who want highly progressive taxes, is susceptible of elucidation and accomplishment, because people don't want to defeat their own ends. Those persons who want highly progressive taxes don't want to lose the very objects which they are seeking, and in one way or another that, I think, can be attended to.

I have indicated in a general way what seems to me almost the only remedy for the defects in federal taxation, and the only general method of improving federal tax laws, which is available, and that is the remedy of education. We need more educational work; perhaps as much as anything else we need more fundamental facts. As an expert, who within the limitations of his time and strength has endeavored to get at the truth in a disinterested way in this connection, the thing I feel most is the absence of clear-cut facts relating to many of the deepest and most important of federal tax questions. The bureau of internal revenue, in my opinion, should spend ten times as much money as it is spending today in getting fundamental facts. Let them be applied as they may; let them be used for partisan purposes; they will be; all that is part of a larger educational campaign.

Think, for instance, of Mr. Drake who spoke here yesterday: of the rich, almost priceless results of his work of valuation, if it is properly done, and much of it is well done — properly done. Those results ought to be disseminated. The returns of the income tax and excess profits tax have facts and information and data, the like of which the history of science and the world have never seen. Some of it is being published; ten times as much should be published, to be utilized by this trade association, by that group of industry, by this educational institution, by that research bureau.

But we need, I think, more than that—but quite in harmony with it—a systematic, continuous pounding home of certain truths.

Here I come, so far as machinery is concerned, to a practical proposition—the only one perhaps I can make. We need somewhere an organization which shall get these facts and publish them; drive home their principal lessons, and do it day in and day out, and year in and year out. The great enemy of better tax-law-making is inertia; the limitations of the human mind. We need to get some agency that will keep at it; we need a stable policy; we need permanency of tenure in the treasury department, among other things.

What I am proposing is this: we need in the federal government some organization; some body that has the spirit, if not the exact form, of the best state tax commission. If you will interpret my suggestion in that sense, because I am infinitely more concerned with the spirit than I am with the form — we need a federal tax commission, and we need it to keep certain facts before the people; to get the facts in the first instance, and to keep them before Congress. It is needed because the biggest defect in the general administration of the federal income tax at the present time is the absence of men who are making their work there a career.

The federal treasury department and the bureau of internal revenue have had, since the beginning of the war, some of the finest talent, keenest brains, and best conscience, combined, that this country accords, particularly younger men; but it has not kept them. The very best brains are drained off every day. Recently I think the supply of material has been nothing like so good as it was during the war, but in any event, the very best are constantly leaving. Rulings, traditions, attitudes, interpretations—made after the most careful thought, and prolonged study, are forgotten, and new faces appear to thresh over the problems; to arrive at no better conclusions, and to spread consternation among taxpayers. I could not exaggerate, really, my profound regard and admiration for the temper and spirit in which the treasury department and the internal revenue bureau have been administered. I don't believe that you could get men of better intentions or better spirit than the three commissioners of internal revenue, for instance, that I have known. But those men pass; it is a passing episode with them; they are not making taxation a life-work; they are overwhelmed with the administrative problems with which they have to deal; there is no thorough continuity of tax policy. There has been some continuity, because it happens that the secretaries of the treasury have thought much alike, but, for the most part, any cumulative effect of opinion, of thinking, of planning, of policy, is utterly lost. Not only do we have poor tax laws because of that, but we have infinitely poor administration of the tax laws that exist, because of that.

I said in the beginning that I was going to reserve for final statement what seems to me the principal necessity in this connection. I think we need most of all something that would most certainly bring us better tax laws, and that is a feeling among everybody concerned; among tax experts; among college professors; among business men; among members of Congress, of profound humility; an intense eagerness to get more facts and more knowledge and a profound realization of how little is known in this connection. If I have any wisdom to impart on this subject, that is the wisdom.

I think few people realize the extent of the revolution which has taken place in a very few years. Since 1914 the direct tax revenues of the government have increased from $380,000,000 to $4,600,000,000. The contribution of direct taxes, such as income taxes, has grown nearly fifty fold. We collected in 1914 the respectable sum, from income taxes, of some $70,000,000; we collected from income taxes last year—the fiscal year just closed—three and one-quarter billions. Meanwhile income tax rates have been increased from, as I recall, a maximum of 7% to a maximum of 58%. Now, gentlemen, that represents a revolution within lines of taxation, as significant and real and striking as the revolution in Russia. An income tax of 7% is an absolutely different thing from an income tax of 58%.

The experience that made so many of us converts to income taxation; the experience that explains the introduction and spread of income tax the world over, was gained with income taxes not exceeding five, six, seven or eight per cent. Much of the knowledge we gained and the experience we gained with income taxes with low rates is not applicable to income taxes with these new rates. The income tax that yielded only a small fraction of the federal revenues in 1914, is yielding in 1921 or 1922, together with the estate tax, practically 75% of the federal revenue. Not only that, but the entire spirt, meaning and effect of this tax has been transformed, and before we can deal intelligently and properly with these problems, we have got to understand that we are, all of us, certainly I, certainly the average member of Congress, as a little child in the face of them. Until we know how little we know and until we get an intense, eager, sustained desire to know more disinterestedly, we shall not, in the big, fundamental particulars, improve federal tax-making. That is the principal point that I want to leave with you.

The other points are the necessity for educational work—educational work by associations such as this; educational work by trade associations; and the introduction into the federal government, somehow—I don't care what machinery is employed—of men with dignified positions, of adequate salaries, who are willing to

give themselves for long terms, if not for life, to this very great profession of not only improving the tax service but the tax laws of the nation.

CHAIRMAN HAIG: All members of the tax association will perhaps recall receiving in their mail a year ago last June one of the little envelopes which the secretary occasionally is kind enough to distribute. Upon opening it you saw fall out a little bit of flimsy tissue paper which announced that the supreme court had done an unexpected thing with reference to a case which had been brought before it by a national bank in Richmond. We a year ago at Bretton Woods were just beginning to appreciate the significance of the words which were contained on that little slip of flimsy paper. At that time a committee was appointed by the tax association to consider the problem and to carry into effect the desires of the association as expressed in a resolution adopted at that time. From such partial reports as have drifted into the conference this week, that committee has apparently had a long, hard winter. Senator Law of New York, who is chairman of the committee, will present at this time the report of the committee of the national tax association on bank taxation.

WALTER W. LAW, JR.: Ladies and gentlemen of the conference: The report that I shall submit on behalf of the committee on bank taxation is a summary of the arguments in support of the position the conference took a year ago, and which has been maintained to the best of their ability by your committee. A great number of the arguments we find are very similar to those referred to by Senator Lord last night. Mr. Tobin has read the committee's report and commiserated with me this morning because he said he was afraid it would be overshadowed by Senator Lord's address of last night. I told him there was no doubt at all of that, and also there was no objection. It is unavoidable that there shall be a great deal of similarity. Senator Lord worked very closely and very diligently as a member of the committee and as the leader of it in Washington.

We had first of all a meeting in December, and attempted to frame a bill for the amendment of section 5219. Now, it happened that at that time there was a meeting in Washington of the executive council of the American bankers' association. We asked several times and finally secured a conference with that committee, in an effort to agree with them upon some program. The committee on legislation, if I am not mistaken, met us. We thought we were in a fair way of agreement, but at a later conference they told us that, whether or not they had been mistaken in their original assumption, they now found that they did not have authority to deal with us; that president McAdam of the American bankers' asso-

ciation, who through a coincidence happened to be the chief officer of the plaintiff bank in the Richmond case, had appointed another committee to deal with this particular matter. They told us to go ahead and introduce the bill which we had prepared and which we submitted to them, and later on when hearings were held in Washington, the bankers appeared in large numbers and opposed this bill. Their position was exactly as senator Lord stated. They wanted no amendment to 5219; they wanted it to remain as it was. If some amendment was unavoidable, they were willing that the net income of the bank should be taxed, but the measure of the tax—and this of course is the point—they should insist must be the tax imposed upon individual intangibles. We had many hearings in Washington, both before the house committee and sub-committee of the senate, and of course, as you know, the matter is in solution in Washington. During the last few months the Congress has been engrossed with the tariff matter, the bonus matter, and no opportunity has really existed in the senate for consideration of this subject.

REPORT OF THE COMMITTEE ON THE TAXATION OF THE SHARES OF NATIONAL BANKS

There is probably nothing of greater importance that can be accomplished at this time by the national tax conference than to formulate and secure adoption on the part of Congress of a new policy as to taxation by the states of the shares, property or income of national banks. The subject is brought to the front as a result of a decision of the supreme court in the case of the *Merchants National Bank of Richmond* v. *City of Richmond* (256 U. S. 635), wherein it was held that section 5219 of the revised statutes in effect limits the tax upon the shares of national banks, which may be imposed by the states to the tax levied upon individual moneyed capital, whereas prior to this decision it was generally understood throughout the country that while in the words of the statute the tax upon national bank shares was limited to the tax upon "other moneyed capital in the hands of individual citizens of such state," these words had become so modified by judicial interpretation that in effect the tax was to be measured by the tax levied upon the shares of other institutions doing a similar banking business within such state.

A brief reference to the history of the statute will serve to elucidate this point. The first act providing for the organization of national banks, passed the 25th of February, 1863, contained no grant of power to the states to tax national banks in any form whatever. Doubtless the far-reaching consequences to arise from depriving the states of the source of revenue which would spring

from the taxation of such banks and the error of not conferring the power to tax, early impressed itself upon Congress, for in the following year, by the act of 3rd of June, 1864, power was granted to the states not to tax the banks, their franchises or property, but to tax the shares of stock in the names of the stockholders. This provision subsequently was amended and supplemented in various particulars by the act of 4th of February, 1868, and the result of this legislation is now embodied in section 5219 of the revised statutes. It will be recalled that just prior to the Civil War the banking business of the country was conducted entirely by state institutions. There were no banks of any description chartered by the national government. The country had not forgotten the disastrous ending of the career of the old United States bank, during the administration of President Jackson; and the attitude of the state banks, which would be subjected to the competition of the new national institutions and would be deprived of their power to issue currency, which power was being conferred upon the national banks, might well result in an effort to arouse hostile feeling in the states against the new national banks. Furthermore, a large part of the country had lately been engaged in civil war against the national government and the attitude of states within the area of opposition toward these new national institutions might well give rise to feelings of apprehension. Then, too, the measure of limitation proposed, namely, the tax upon individual moneyed capital, was the one which would naturally suggest itself to the mind of Congress at this period. The corporate form of business institution was then little used. Business was for the most part conducted by individuals or copartnerships. All taxable property, including that of individuals, copartnerships and of a few corporations which were then in existence, was taxed under the so-called "general property" system, whereby real and personal property were listed alike and a tax levied at a uniform rate upon all such property. The classification of property for purposes of taxation into tangible and intangible property, or the system of reaching it through the taxation of corporate franchise or corporate or personal income, did not prevail, and hence the limitation which was adopted by the Congress of 1864 when it framed section 5219 was quite as natural as it would be surprising had there been adopted a measure which would be appropriate for the changed conditions existing today. Since that time the growth of corporations has been phenomenal. The number and variety of ways in which they are used could not have been foreseen, and as a partial consequence thereof the increase in the amount of intangible personal property in the hands of the individuals of the country has increased prodigiously. All fear or prejudice against, or hostility towards national banks on the part of the states has vanished, and any lack of full and

complete harmony between any state of the Union and the national government has happily disappeared forever.

With the increase in the amount of intangible personalty the inadequacy of the general property tax system has become increasingly apparent. This has been recognized over and over again by economists and jurists and is making its mark progressively upon the taxing systems of the states, as the following brief résumé will show. The following states have adopted changes from the general property tax; while the list is not exhaustive, it shows a very considerable departure in the country as a whole from the general property tax.

Connecticut.	Intangible personalty is taxed at the rate of four mills on the dollar, in lieu of all other taxation.
	Bank shares are taxed at a flat rate of one per cent.
Delaware.	Now levies an individual income tax.
	Bank shares are taxed at a flat rate of one-fifth of 1% upon their value.
Iowa.	Intangible personalty is taxed at a flat rate of five mills upon the dollar, in lieu of all other taxation.
	Bank shares are assessed and taxed in the same way and at the same rate as real property.
Kentucky.	Intangible personalty is taxed for state purposes at the rate of four mills per dollar and is exempt from local taxation.
	Bank shares are assessed and taxed in the same way and at the same rate as real property.
Maryland.	Interest-paying bonds or other evidences of indebtedness are taxed at a flat rate of one and one-half mills per dollar for state purposes and three mills per dollar for county purposes.
	Bank shares are taxed at the regular rate of taxation for state purposes, and a flat rate of one per cent for county, city, and municipal purposes.
Massachusetts.	Levies an individual income tax on income derived from certain intangibles.
	Bank shares are assessed and taxed in the same way and at the same rate as real property.
Mississippi.	Levies an individual income tax.
	Bank shares are assessed and taxed in the same way and at the same rate as real property.
Missouri.	Levies an individual income tax.
	Bank shares are assessed and taxed in the same way and at the same rate as real property.

MINNESOTA.	Intangible personalty is taxed at a flat rate of three mills on the dollar in lieu of all other taxation, except that mortgages pay a recording tax in lieu of other taxes and notes secured by recorded mortgages are tax-exempt. Bank shares are assessed at 40% of full value and taxed at the local tax rate.
MONTANA.	Has a classified property tax assessing moneys and credits at 7% of full value. Bank shares are assessed at 40% of full value.
NEBRASKA.	Intangible personalty is taxed on the basis of 25% of the mill rate levied upon tangible property. Bank shares are assessed and taxed in the same way and at the same rate as real property.
NEW YORK.	Levies an individual income tax. Bank shares are taxed at a flat rate of 1%.
NORTH CAROLINA.	Levies an individual income tax. Bank shares are taxed at the same rate as real estate.
NORTH DAKOTA.	Levies an individual income tax. Bank shares are taxed at 50% of their value, after deducting the value of real estate otherwise taxed.
OKLAHOMA.	Levies an individual income tax. Bank shares are assessed and taxed in the same way and at the same rate as real property.
PENNSYLVANIA.	Intangible personal property owned by individuals is taxed at the rate of four mills on the dollar. Bank shares are taxed at a fixed rate of four mills on the dollar.
RHODE ISLAND.	Intangible personalty is taxed locally at the rate of four mills on the dollar. Bank shares are taxed at the flat rate of four mills on the dollar.
SOUTH DAKOTA.	Intangible personalty is taxed at the rate of three mills on the dollar in lieu of all other taxation. Bank shares are assessed and taxed in the same way and at the same rate as real property.
VIRGINIA.	Intangible personalty is divided into five classes and pays a state tax of from two to eight and one-half mills on the dollar, and localities may levy in some cases an additional tax of from two to three mills.

	Bank shares are taxed at a rate of eleven mills and the executive committee of the Virginia bankers' association has agreed to discourage as far as possible the attempt on the part of any bank in the state to invoke the protection of section 5219.
Wisconsin.	Levies an individual income tax. Bank shares are assessed and taxed in the same way and at the same rate as real property.
District of Columbia.	Levies a tax of five mills on the dollar on intangible personalty and taxes national banks at the rate of 6% on their gross earnings.

It will be readily seen that under these conditions the meaning given to section 5219 by the Richmond decision has had a disturbing effect in every one of the aforesaid states, and it will probably be a controlling deterrent to other states which may wish to follow those states in their attempts to adopt more modern and intelligent methods of compelling intangible personal property to bear its just share of the tax burden. Under the Richmond decision, and assuming that the banks can establish discrimination in substantial amount, there are but two alternatives before the states referred to above; namely, either revert to the system of the "general property" tax and in consequence lose the revenue secured from intangible personalty through their improved methods of taxation or, on the other hand, reduce their tax upon national bank shares to the same level as that upon individual moneyed capital. The condition existing in Virginia is noteworthy. There, the officers of national banks, subsequent to the Richmond decision, realizing that a lowering of the rate on individual intangibles would increase the yield, have actively and urgently contended for such a reduction and have agreed, many of them in writing, that if a lower rate on individual intangibles is enacted, they will consent to pay a tax on bank shares of double the rate levied on such intangibles and will not invoke the rule of the Richmond decision. Hence we have the unenviable situation where the tax upon the shares of national banks is levied by grace of the officers and shareholders of the national banks in such state. Probably any national bank or any individual holder of shares in a national bank could contest and defeat the tax in part, and the amount of revenue thus lost to the state would have to be made up by the remaining taxpayers. This is hardly a dignified position for the Old Dominion, in view of the ideas of state sovereignty which were held by her great patriots and statesmen.

It has been claimed that the meaning given to section 5219 in the Richmond decision should have been apparent all along, and

particularly since the Boyer decision in 1885 (113 U. S. 689), which pointed out that the statute precluded "the possibility of such an interpretation of the act of Congress as would justify states, while imposing the same taxation upon national bank shares as upon shares in state banks, from discriminating against national bank shares in favor of moneyed capital not invested in state bank stock." There can be no question that the literal meaning of the words clearly ties bank shares and individual moneyed capital together, but a modification in the meaning or construction of a statute, made necessary by the new needs and conditions of society, is by no means unusual. The decisions relating to section 5219 have all along held that the limiting moneyed capital must be competing moneyed capital and it has been always generally supposed, and is now claimed, by your committee that as a question of fact or of law, generally speaking, individual moneyed capital cannot properly be held to be in competition with the capital of national banks.

The states referred to in the brief reference to the various modes of taxation which have developed would never have adopted such legislation if they had supposed that they were thereby contravening the provisions of section 5219. Such legislation was tacitly concurred in by every national bank in every such state, with only one or two exceptions, amounting to many thousands of banks, and such exceptions were so few that in themselves they hardly raised a serious question as to the infraction of the provisions of section 5219.

Last year, at our conference at Bretton Woods, Professor Bullock made this statement: "Back in 1907, when I undertook to draw in Massachusetts a law providing for a three-mill tax on intangible property, I took an afternoon or two off and looked through those bank cases, and as I read them I had an uncomfortable feeling that a three-mill tax might make trouble in Massachusetts. I was not a lawyer, and therefore I called for legal advice, and secured it. Eminent counsel who studied the matter with great care, rendered an opinion to the effect that the term 'moneyed capital' had been practically narrowed by the decision of the supreme court during the previous dozen or fifteen years, so that in effect it meant the capital of state banks and other state institutions, such as trust companies, if they were in the commercial bank business and competing with national banks. On that assurance we went ahead with our plans for a three-mill tax in Massachusetts and later laid our plans for a state income tax."

But the question of competition between private capital and banking capital is dismissed in the Richmond decision with the following brief reference: "It was shown by evidence, without dispute, that moneyed capital in the hands of individuals invested in

bonds, notes and other evidences of indebtedness, comes into competition with national banks in the loan market."

The committee submits that it is equitable that banks as institutions should be taxed higher than individual moneyed capital and that since the bank share tax is paid by the bank and treated as an operating expense it is inequitable to limit the bank tax by the tax on individual moneyed capital. The charter of a national or state bank is a thing of value, securing as it does the confidence of the community that through official examination the bank deposits are secure. The charter enables the bank to obtain deposits of money from the public, generally to five or ten or more times the amount of its capital stock, and these deposits are used by the bank as capital for the production of profits. Furthermore, the banks, state and national, have long since adjusted themselves to the principle of paying higher taxes than individuals pay upon their intangibles. Banks have prospered under this system and persons seeking bank charters or buying bank shares have done so with such system in view, and to assure them now of a new and special privilege in such matters would be equivalent to securing to the holders of national bank shares a gratuitous increase in the value of their shares amounting to very large sums, which would have to be offset by corresponding increases in the taxes to be paid by the remaining taxpayers. To quote Professor Seligman:

> "If all securities have hitherto been subject to taxation and if one particular class of securities be suddenly exempted, the value of these tax-exempt securities will rise by an amount equivalent to the capitalization of the tax." (The Income Tax, 1921, page 606.)

and again:

> "Where the tax on banks assumes a form as in many of the American states of a special tax on bank shares, the bank deducting the tax from the dividends, the tax really becomes one on particular forms of property rather than on business. The result will be a capitalization of the tax, with a corresponding reduction in the value of the shares." (Incidence of Taxation, 1910, page 361.)

To limit the tax upon national bank shares, therefore, to the amount levied upon individual moneyed capital, would seem clearly unwise and constitute a favor or gratuity to holders of shares of national banks which can hardly be justified.

Consequently, in view of the meaning of section 5219, which is now clearly established by the Richmond decision, your committee recommends the amendment of said section and approves for such purpose the bill introduced by Senator Kellogg, 67th Cong., 2d Ses., S. 3695, which provides that the tax upon the shares of na-

tional banks shall not be at a greater rate than is assessed upon other moneyed capital employed in the business of banking, and that in any state where an individual income tax is in force the tax may be levied upon the net income of a bank in lieu of the tax upon the shares, but such income tax shall not be at a greater rate than is assessed upon the net income of other moneyed capital employed in the business of banking.

Sir Henry Maine has said that in progressive communities there is always a gulf between the statutory law and the needs and customs of society, due to the constant development which occurs in all human affairs, and that while the effort is constantly being made to close the gulf, this can never be entirely accomplished and that the degree of the civilization of a community is in inverse ratio to the width of the gulf; that there have been three methods followed for narrowing the gulf, (1) by legal fiction, (2) judicial interpretation, and (3) legislation. Is this not a case where Sir Henry Maine's dictum applies? May it not be said that the needs of the United States have outgrown the archaic wording of section 5219? Judicial interpretation has been resorted to to close the gulf between the wording of the statute and the needs of the community. It appears that judicial interpretation has proved ineffective as a method and resort must now be had to legislation.

If the tax upon bank shares is no higher than the tax levied upon other moneyed capital employed in the business of banking, national banks will be amply protected. It is not conceivable that the state would levy an oppressive rate of taxation upon all its national banks, its state banks, its trust companies doing a banking business, and any individuals and copartnerships engaged in the same line of business. If indeed it should happen that an oppressive tax should be levied against all the banking capital in a given state, the effect would be almost instantaneous and would quickly bring about a correction of the excessive tax. Nothing is so sensitive as moneyed capital and the effect produced upon manufacturing and general business and upon the employment of labor in such state would quickly result in a correction of the excessive tax. In the case of *McCulloch* v. *Maryland* (4 Wheat. 315), chief justice Marshall referred to this very question in his opinion, at p. 428:

> "The only security against the abuse of this power," he said, referring to the power of the states to tax, "is found in the structure of the government itself. In imposing a tax the legislature acts upon its constituents. This is, in general, a sufficient security against erroneous and oppressive taxation."

In the McCulloch case, it will be recalled, the United States Bank was the only national bank in the country; its stock was held partly by the United States government and partly by citizens of

the United States, not of any one state. Very possibly none of the shares were held by citizens of Maryland. In our suggested case, on the other hand, the competing national banks, state banks and trust companies, copartnerships and individuals will all be located entirely within the state and the shares will presumably be held entirely or nearly so by its citizens. It is of interest to recall also that the tax in question in the McCulloch case was not against the shares of the bank but upon the right to issue paper money under the authority of Congress. On this point the chief justice remarked, at p. 436:

> "This opinion does not deprive the states of any resources which they originally possessed. It does not extend to a tax paid by the real property of the bank, in common with the other real property within the state, nor to a tax imposed on the interest which the citizens of Maryland may hold in this institution, in common with other property of the same description throughout the state. But this is a tax on the operations of the bank, and is consequently a tax on the operation of an instrument employed by the government of the Union to carry its powers into execution."

Surely it will not be contended that there is any word here in opposition to a policy of Congress to permit the states to tax the shares or income of national banks to as great an amount as they tax all similar competing institutions or individuals in such state. We do not think it can be successfully contended that the class of institutions and individuals here indicated will constitute a small tempting group such that the legislatures will proceed to force the members thereof to contribute an undue proportion of the expenses of government. Railroads, insurance companies, waterworks companies, gas companies, electric lighting and power companies and street railway companies are now separately classified for tax purposes in some states and may be in others, and Congress has never sought to interfere with such method and could not do so, except in cases where a federal function was involved. And why should banking institutions be accorded more favored treatment than the classes above enumerated. Furthermore, if such classification of public utilities had resulted in oppressive taxation it would have been quickly condemned, but we doubt if any class of taxpayers have been called upon to make greater sacrifices than owners of real estate, who constitute the most numerous class of taxpayers in the country as a whole. Indeed, the contention seems to call in question the very theory of representative government as a system under which property is secure and the rights of citizens are respected and upheld and justice administered.

The establishment of the State Bank of North Dakota and the

removal thereto of the deposits of public moneys does not appear to your committee to be an example proving the necessity for the retention of section 5219 in its present form. The Bank of North Dakota, being owned and operated by the state, is exempt from all taxation. No power of the federal government could prevent such action on the part of North Dakota, and section 5219 in its present form did not conflict with such action of the state, and the natural reaction which followed the rather extreme measures which were adopted under the stress of political excitement, promise to be entirely sufficient to restore normal conditions in the state, both with regard to banks and other matters which have been made the subject of political discussion in North Dakota within the past few years.

The alternative method of taxation permitted by the Kellogg bill, namely, the tax on the net income of the bank, would be a departure from the practice which has hitherto prevailed. A tax on the net income of the bank is a tax upon the bank as an institution, and not a tax upon the shareholder. Being levied on net income, there would be no tax where there is no profit and the tax would in all cases be strictly in proportion to the ability of the bank to pay. A question arises, however, whether the income from Liberty bonds or other tax-exempt securities held by the bank would be taxable. We have on the one hand the case of *Gillespie* v. *Oklahoma* (257 U. S. 501), wherein Justice Holmes says that

> "In cases where the principal is absolutely immune from interference an inquiry is allowed into the sources from which net income is derived, and if a part of it comes from such a source the tax is *pro tanto* void."

And on the other hand the case of *Security Savings & Commercial Bank* v. *District of Columbia* (279 Fed. 185) decided in the court of appeals, District of Columbia, March 6, 1922, where it was held that a tax upon incorporated savings banks, amounting to 4% of their gross earnings, less the interest paid their depositors, is a franchise tax, computed upon the basis of gross earnings, and not a property tax, so that the tax is valid, though a portion of the gross earnings consisted of interest derived from liberty bonds and other securities exempt from taxation. "It will be observed," says the court, "that the paragraph we are considering imposes upon the corporation the duty of paying the tax, and provides that the amount shall be determined by the sum of the gross earnings. If there are no earnings, there will be no tax, no matter how much property the corporation may own, and there will be no earnings unless business is done. The amount of the tax fluctuates with the quantity of business transacted, and is measured by it. This indicates an intention to tax the doing of business, and not the prop-

erty; hence the tax is a franchise tax." So, whether or not the courts would permit the inclusion of interest of tax-exempt securities as taxable income of the bank is at least open to doubt.

Another interesting question arises in relation to taxing the dividends on shares of national banks by including the same as taxable income in states where an individual income tax is in force. Such dividends have been so included in one state, namely New York, pursuant to an opinion of the attorney general of such state. (Opinions of attorney general, 1920, p. 215).

> "Where a state levies a tax on net incomes generally (less specified exemptions," says this opinion, "it is doubtful whether the courts will look to the source of items of gross income for the purpose of saying whether or not jurisdiction exists to impose the tax; but it is more likely that they will look only to the power of the state to enforce its mandate within its borders."

The opinion quotes *Peck & Co.* v. *Lowe,* 247 U. S. 165; *U. S. Glue Co.* v. *Oak Creek,* 247 U. S. 321; *Shaffer* v. *Carter,* 252 U. S. 37, and other cases, but these cases were all considered in the Gillespie case, where, in reference to them, Justice Holmes said:

> "The criterion of interference by the States with interstate commerce is one of degree. It is well understood that a certain amount of reaction upon and interference with such commerce cannot be avoided if the States are to exist and make laws. * * * The rule as to instrumentalities of the United States, on the other hand, is absolute in form and at least stricter in substance."

Economically it would seem that dividends upon the shares of national banks ought to be included as taxable income, in a state where income from all sources, except educational, religious and eleemosynary institutions, is similarly taxed. A tax upon the bank is impersonal and different in its nature from a tax upon personal income and the two do not conflict. Other corporations and real estate are taxed impersonally and the yield of such property when paid to individuals is included as taxable personal income, and why should national or state banks be treated on any other basis.

The success of an income tax is dependent upon maintaining low rates, so that the inducement to evasion will not be great. But to maintain low rates it is necessary to levy the tax on the broadest possible base, and unfortunately any exemption of a considerable source of income is sure to be followed by determined efforts to exempt other sources, and once the precedent is established such efforts are hard to resist.

The discussion gives rise to the further inquiry whether a na-

tional bank or a lease of the right to withdraw oil from the ground such as was referred to in the *Gillespie* v. *Oklahoma* case, is after all a federal agency in the true sense in which that term was used in the historic case of *McCulloch* v. *Maryland*. Such an agency, of course, the United States Bank of John Marshall's time was, and such agencies are the United States courts, postoffices, custom houses and mints. Such institutions are truly administrative or governmental agencies and not commercial enterprises. But should not a privately owned national bank, operated solely for profit, and coming into direct competition with state banks and trust companies doing a banking business be otherwise regarded, with respect to matters of taxation? A national bank is comparable in this connection to a railroad carrying United States mail. It is true that in issuing currency and performing the duties of a member bank in the federal reserve system, a bank becomes an important aid to the government. But do not the railroads in carrying mails also perform important federal functions? And yet they are not classed as federal agencies and as such favored in state taxation. Where these quasi-governmental functions are profitable or at least desirable in themselves, surely there can hardly be any good reason for permitting them to constitute a ground for erecting such corporations into a favored class among taxpayers and permitting them either to escape a part or all of their just burden or else be taxed by consent, as is the case in Virginia.

In the Gillespie case the court says that

> "a tax upon such profits is a direct hamper upon the effort of the United States to make the best terms that it can for its wards."

But should this effort extend to invoking in behalf of the wards the sovereign attribute of tax exemption? Is it fair to the natural and corporate persons in the states to thus favor the wards and their lessees, who operate only for profit and in competition with the less favored individuals in the states? It is, of course, the law, but is it equitable? The question would seem to answer itself in the negative and to suggest that a federal statute might not be amiss which would provide that where a privately owned quasi-governmental agency, which is operated for a profit within a state, comes into competition with a natural or corporate person which is subject to taxing statutes, general in their scope, such agency shall be subject to the same provisions.

Much has been made of the phrase "the power to tax is the power to destroy," as if the states might desire and attempt to destroy the national banks or other so-called federal agencies, and the people should be made secure against such awful if self-inflicted calamity. But are we not in danger of going so far in the other

direction as to induce a breakdown of the normal and necessary taxing functions of the states and a further and undesirable concentration of work in Washington and the subordination of the states to mere subdivisions in an over-centralized bureaucracy?

So much for the future policy in respect of the matter under discussion. We cannot forget that we are faced with many scores of suits instituted in several states for the purpose of recovering taxes already paid by the banks and expended by local communities; taxes to which both the taxpayers and the payees have long since adjusted themselves and with regard to which there is no question of unfairness or inequity, but merely a question of law, which has arisen since the Richmond decision.

To meet this question and quiet the suits the so-called validating clause of the Kellogg bill has been framed. The bill at lines 20-25, page 2, and lines 1-3, page 3, provides as follows:

> "That the provisions of section 5219 of the Revised Statutes of the United States as heretofore in force shall not prevent the legalizing, ratifying, or confirming by the States of any tax heretofore paid, levied, or assessed upon shares of national banks or the collecting thereof, provided such taxation is not greater than the taxation imposed for the same period upon banks, banking associations, or trust companies doing a banking business, incorporated by or under the laws of such State, or upon the moneyed capital or shares thereof."

By this provision Congress would only give the permission which heretofore it might have given and was assumed to have given to assessment of national banks upon the same basis as banks, banking associations and trust companies doing a banking business, as they have in fact been assessed in the various states. In effect the provision, so far as Congress is concerned, simply authorizes the states by appropriate legislation to legalize, ratify, and confirm such assessments as of the date when imposed. By the provision Congress would be saying now what it could previously have said; that such assessments were proper and valid.

The provision is thus clearly within the power of Congress, since it attempts to do no more than precisely the same thing that Congress could previously have done, namely; permit the taxation of national banks as other banks, banking associations and trust companies doing a banking business are taxed. That which Congress could have granted or permitted it may surely authorize the states to legalize, ratify and confirm, so far as its grant or permission is essential. This principle has been universally recognized by the courts with respect to legislative power both of Congress and of states.

It was clearly stated and upheld as to congressional power in the

case of the *United States* v. *Heinszen & Co.*, 206 U. S. 370, which was followed in the more recent case of *Rafferty* v. *Smith Bell Co.*, 257 U. S. 226, decided December 6, 1921.

In the Heinszen case, action was brought to recover the amount of tariff duties exacted in the Philippine Islands on merchandise, the duties having been collected under authority of an order of the President before Congress, on March 8, 1902, had enacted tariff duties for the Philippines. The court had held that the duties complained of were illegal and the question presented was whether an act of Congress in 1906 (34 Stat. 636, June 30, 1906) legalizing and ratifying the imposition and collection of the duties prior to March 8, 1902, was within the power of Congress. It was held that Congress had such power and that the legalizing and ratifying act of 1906 was effective, citing *Hamilton* v. *Dillin*, 21 Wall 73, and *Mattingly* v. *District of Columbia*, 97 U. S. 687. In so holding the court quoted (page 384) from the decision in the Mattingly case which concerned the validity of an act of Congress ratifying certain void assessments for street improvements in the District of Columbia, wherein it was said:

> "If Congress or the legislative assembly had the power to commit to the board the duty of making the improvements, and to prescribe that the assessments should be made in the manner in which they were made, it had power to ratify the acts which it might have authorized. * * * Under the Constitution, Congress had power to exercise exclusive legislation in all cases whatsoever over the District, and this includes the power of taxation. * * * It may therefore cure irregularities, and confirm proceedings which without the confirmation would be void, because unauthorized, provided such confirmation does not interfere with intervening rights."

The court then states (page 384):

> "It is then evident, speaking generally, both on principle and authority, that Congress had the power to pass the ratifying act of June 30, 1906."

In discussing the question whether money paid to discharge the illegally exacted tariff duties justly and equitably belonged to the claimants and that the title thereto continued in them as a vested right of property and hence the right to recover the money could not be taken away, the court said (p. 386):

> "But here, again, the argument disregards the fact that when the duties were illegally exacted in the name of the United States, Congress possessed the power to have authorized their imposition in the mode in which they were enforced, and hence

> from the very moment of collection a right in Congress to ratify the transaction, if it saw fit to do so, was engendered. In other words, as a necessary result of the power to ratify, it followed that the right to recover the duties in question was subject to the exercise by Congress of its undoubted power to ratify."

The court also quoted (p. 387) from Cooley on Constitutional Limitations (7 ed., p. 543):

> "Nor is it important, in any of the cases to which we have referred, that the legislative act, which cures the irregularity, defect or want of original authority, was passed after suit brought, in which such irregularity or defect became matter of importance. The bringing of suits vests in a party no right to a particular decision * * * and his case must be determined on the law as it stands, not when the suit was brought, but when the judgment is rendered."

It is thus apparent that while the Heinszen case did not present identical facts to those herein appearing, inasmuch as therein the subject of the validating act related to tariff duties which are imposed in a manner to be authorized by Congress and are actually imposed, either by Congress or by its agent, whereas here the subject of the validating act relates to assessments on national banks which are imposed in a manner to be authorized by Congress but are actually imposed by states or municipalities, there is no distinction in the principle applicable. In each case Congress, having the power to prescribe the manner in which the charges may be imposed, may authorize, ratify and confirm charges imposed in such manner.

In other words, it was within the power and authority of Congress to prescribe for taxing national banks as stated in the bill, just as it was within the power and authority of Congress to prescribe for imposing the tariff duties which were collected. Accordingly, in both cases it has the power to authorize the taxing authority to ratify and confirm that which was done so far as its permission and authority is necessary to the imposition of the tax.

As stated in Cooley on Taxation (3rd ed., 517):

> "The general rule has often been declared, that the legislature may validate retrospectively the proceedings which they might have authorized in advance."

The same rule is stated in the *Exchange Bank Tax Cases*, 21 Fed. Rep. 99 (affirmed 122 U. S. 154). At page 101 the court stated:

> "And it is immaterial that such legislation may operate to

> divest an individual of a right of action existing in his favor, or subject him to a liability which did not exist originally. In a large class of cases this is the paramount object of such legislation."

Upon affirmance by the United States Supreme Court it was said (122 U. S. 166):

> "The plaintiff and the other shareholders were bound, as owners of property, to bear their just proportion of the public burdens, and * * * it would seem but just that the defect should be cured, if practicable, and the shareholders not be allowed to escape taxation, and thus entail the burden they should bear upon other taxpayers of the community."

And in the case of *Mattingly* v. *District of Columbia,* 97 U. S. 687, cited and discussed in the Heinszen case, the court quotes (p. 690) as "accurately stated," the rule asserted by Judge Cooley, in view of the authorities, as follows:

> "If the thing wanting, or which failed to be done, and which constitutes the defect in the proceeding, is something the necessity for which the legislature might have dispensed with by prior statute, then it is not beyond the power of the legislature to dispense with it by subsequent statute. And if the irregularity consists in doing some act, or in the mode or manner of doing some act, which the legislature might have made immaterial by prior law, it is equally competent to make the same immaterial by a subsequent law. (Cooley Const. Lim. 371)."

Thus in *Shuttock* v. *Smith,* 6 N. D. 56; 69 N. W. 5, where the state board of supervisors levied without authority a state tax which the legislature might have levied or ordered the board to levy, it was held that the legislature could validate a defective levy which it might have authorized to be made in the manner in which it was laid.

In *Marion County* v. *Louisville & N. R. Co.,* 91 Ky. 388; 15 S. W. 1061, where a county had authority to levy a head tax for county purposes and levied an ad valorem tax, it was held that the legislature, by subsequent enactment, might validate the levy.

In *Kettelle* v. *Warwick & C. Water Co.* (R. I.), 49 Atl. Rep. 492, where a township tax was void as exceeding the statutory town tax limit, it was held that the legislature had power to pass an act validating the assessment so erroneously levied and such an act was constitutional.

As said, however, in *Exchange Bank Tax Cases,* 21 Fed. Rep. 99, at p. 100:

> "Undoubtedly, the legislature could not validate a tax which was prohibited by the laws of the United States; but it was competent for them to sanction, retroactively, such proceedings in the assessment of the tax as they could have legitimately sanctioned in advance."

The case of *Forbes Pioneer Boat Line* v. *Everglades Drainage Commissioners* (42 Sup. Ct. 325; April 10, 1922) is not authority to the contrary. There the attempted validating act referred to tolls for passing through the canal and the supreme court pointed out that the legislation was invalid, because toll charges could not be imposed retroactively and therefore could not be validated if illegally collected and distinguished taxes from tolls in this particular.

Thus only by permission of Congress may the states, by retrospective legislation, validate taxes not authorized under permission previously given. The necessity for the validating provision of the bill thus appears.

Unless this permissive provision of the bill is retained the states will be powerless to validate taxes imposed on national banks which are in accord with the proposed amendment and there can be no relief to the states with respect to taxes heretofore imposed, and undoubtedly there will be increasing litigation as to the taxes imposed, and recoveries of taxes paid and non-payment of taxes, seriously jeopardizing the state and municipal revenues. For many years taxes have been imposed and paid without complaint by national banks, where the tax compared with that paid by state banks and trust companies but differed from that imposed as to individuals. Thus the situation is critical and calls not only for authority to levy such taxes in the future, but for the retroactive permission of Congress authorizing the states to validate taxes heretofore levied or collected.

As stated in the authorities above cited, no vested right exists to recover such taxes where no judgment has been rendered, and the legal effect of the provision would be not to disturb judgments entered but to remove any cause for similar judgments. Such validating permission therefore, being within the power of Congress and essential to the states and municipalities and fair and equitable as to the banks themselves, should be enacted.

The question of amending section 5219 of the federal statutes was carefully considered and discussed at the fourteenth annual meeting of the national tax conference, held at Bretton Woods, N. H., September 16, 1921, and the following resolution was adopted by an overwhelming vote:

> "*Be it Resolved*, That in the opinion of this conference, Section 5219 of the United States Revised Statutes should be so

amended as to permit the states to tax national banks or the shares thereof or the income therefrom, according to such systems as they may consider desirable, provided that such taxation shall not be at a greater rate nor impose a heavier burden than is assessed or imposed upon capital invested in general banking business and the income derived therefrom."

The Kellogg bill seeks only to promote equality in taxation and to undo and remove special privilege and advantage. It is calculated to make persons and institutions equal before the law, with proportionately equal burdens and responsibilities for the common good. It affords ample and adequate protection and security to the banking interests and it will preserve to the local communities sums already paid in taxes, which have been received, given and expended in entire good faith, according to a system which was time-honored and acceptable to all and for the repayment of which sums no just or equitable reason has been given.

WALTER W. LAW, JR.,
State Tax Commission of New York,
Chairman

NILS P. HAUGEN,
Formerly Chairman Wisconsin Tax Commission

ALEXANDER HOLMES,
Deputy Commissioner, Department of Taxation of Massachusetts

SAMUEL LORD,
Minnesota Tax Commission

H. A. MILLIS,
University of Chicago

THOMAS W. PAGE,
United States Tariff Commission

FRANK ROBERSON,
Attorney General of Mississippi

SEPTEMBER, 1922.

CHAIRMAN HAIG: Before recognizing any speakers, I should like to give the secretary of the conference an opportunity to read a resolution.

SECRETARY HOLCOMB: The committee on inheritance tax has been working industriously, as you perhaps have noticed, for several days, and it is only fair that we should have the results of their deliberations as to resolutions, and therefore they wish to submit this series of resolutions. Under the rules they should be read, and unless the reading is to be dispensed with, I will read them.

VOICE: Read them.

(Resolutions read by Mr. Holcomb)

CHAIRMAN HAIG: The resolutions will be referred to the committee on resolutions. If it is the pleasure of the meeting we shall then proceed to a discussion of the report of the committee on bank taxation, under the five-minute rule, and the further rule that one person shall speak once on the subject but not until all have had an opportunity to be heard, shall he be heard again. I wish also that speakers would kindly mention their name and state.

PHILIP ZOERCHER of Indiana: Yesterday evening in the resolutions committee, when this matter in reference to this question came up, the delegate from the District of Columbia apparently was on the other side. I think before we take up the discussion, if he is present, we ought to let him give his opinion and then take up the discussion.

CHAIRMAN HAIG: Last year at the Bretton Woods meeting we were fortunate in having a representative of the American bankers' association present. I am not sure that there are any representatives present today. There are, however, here, I think, some gentlemen who have been associated with the banking interests, in connection with the litigation, and I think it would be a mark of courtesy and better procedure from every point of view, to give an opportunity first to any who desire to express an opinion contrary to the general conclusions of the committee.

CHARLES J. TOBIN: I don't believe it is possible to adequately present anything in opposition to the report of the committee in five minutes. I have given some attention to the question of the taxation of banks, and I have before me or with me here a copy of the report of Senator Davenport's committee, of New York, which took up the subject of bank taxation, and they made quite an exhaustive study of the subject. There are certain facts and figures contained in this report that I should like to present.

C. P. LINK: Mr. Chairman, I am a strict adherent of the five-minute rule, as a general proposition, but I think there is a good deal of merit in the gentleman's point, and I move you that the five-minute rule in this extreme case be dispensed with, and that we give Mr. Tobin ten minutes; not to exceed fifteen minutes.

(Motion seconded)

CHAIRMAN HAIG: All in favor of extending the time of Mr. Tobin to ten minutes, or not to exceed fifteen, signify by saying aye.

(Ayes and noes)

(Motion carried)

CHAIRMAN HAIG: May I say, Mr. Tobin—you may not know it—that the report that you mention has been distributed to all the members of the conference, so that perhaps you may be able to save some time.

MR. TOBIN: I am only going to refer to parts of it. Through the kindness of Senator Law, I was permitted to read the report of the committee on Tuesday of this week. I regret, as a member of the association, and also as a delegate to the conference, that the taxpayers, as I might classify them, were not represented on this committee. It may have been impracticable; I don't know; I shall not answer that question; yet I notice that in the make-up of most of the committees the taxpayer has had some representation.

The report is signed by Senator Law, who is chairman of the state tax commission of New York; by Mr. Haugen, who was formerly chairman of the Wisconsin commission; by Mr. Holmes, who is the deputy commissioner of taxes of Massachusetts; by Senator Lord, who is a member of the Minnesota commission, and by Mr. Roberson, who is the attorney general of Mississippi—all representatives of these respective states. A reading of the report indicates that it is in large part the proponents' brief which was presented to the two committees of Congress, on legislation pending there on bank taxation. In fact, I believe that Senator Law made the statement in his opening remark, that it was to a large extent built upon the brief that they had presented to Congress.

In my view the taxpayer should be heard. This conference is deemed to be an open forum. We seek the taxpayer as well as the tax official and the economist, and as the taxpayer is not represented, I desire at this time to make reference to some parts of the report of the special joint committee on taxation retrenchment of New York, submitted to the legislature on March 1, 1922. If I may be permitted I shall read those parts. It will not take very long, but the subject was gone into in a very thorough manner. I might preface that by stating that the committee had as its secretary Professor Haig who is presiding over this conference at this time, Professor Mills, Mr. Luther Gulick, Fred Rogers Fairchild, and Miss Mabel Newcomer and Donald A. Davenport. Professor Fairchild, as I understand it, did not take any part in the report as concerns bank taxation, but he did sit in on all the conferences. The report at page 78 reads as follows:

(The conclusions of the New York committee, referred to by Mr. Tobin, are as follows.—Ed.)

CONCLUSIONS. — The Committee has found that the old method of taxing banks and financial institutions, which has been in force for many years, produces very unequal results. It recommends:

(1) *That, in case the necessary amendment to section 5219 of the*

Revised Statutes is granted by Congress, national banks, state banks, trust companies, and Morris Plan banks be subjected to a business tax on their net income levied at the same rate as that applied to the net income of mercantile and manufacturing companies;

(2) *That, because of the difficulty of defining the net income of savings banks, it is recommended that the tax on such institutions be continued in the form of a franchise tax based on some such measure as that provided in the present law;*

(3) *That the class of investment companies be abandoned as a separate category for tax purposes, Morris Plan banks being taxed as suggested in (1) above and all other organizations now included in this class being subjected to the regular franchise tax on the income of business corporations (Section 90).*

The adoption of these recommendations will result in more exact fairness in the treatment of financial institutions as compared with other businesses and will correct the discrimination against the smaller banks of certain classes which the statistical study has revealed.

The adoption of the Committee's recommendation for an income tax upon banks and financial institutions presupposes that a portion of the yield from the taxes will be returned to the localities at least equal to the amount which they now derive from the tax upon shares of stock in state and national banks.

To avoid excessive fluctuations in revenues it is suggested that the principle of averages may well be utilized; that is, instead of basing the assessment upon the net income of a single year, the average of the net incomes of three or five years preceding be used. This method could be adopted gradually by starting with this year's income and incorporating the income of succeeding years as a part of the base as time proceeds. The adoption of this plan in this period of depression and of small profits would work no hardship and should arouse little antagonism.

However, the adoption of the recommendations outlined above must await Congressional action upon the proposed amendment to section 5219 of the Revised Statutes. *If a reasonable amendment is blocked* through the short-sighted opposition of a small section of the financial community, *the Committee proposes* a plan to prevent the evasion by the national banks of their fair share of the governmental burden, through a *return to the taxation of such moneyed capital as competes with national banks, at the same rate as that imposed upon national bank shares.* The Committee regards this as a very undesirable alternative but a necessary one in the contingency described.

CHAIRMAN HAIG: The gentleman's time has about expired.

MR. LINK: Mr. Chairman, in thinking this over, I feel that I was a little arbitrary. If there is no objection, I suggest that we allow Mr. Tobin to conclude his argument within the judgment of the chair.

CHAIRMAN HAIG: The chair hesitates to accept this responsibility.

MR. LINK: I move you the time be again extended, within the judgment of the chairman.

MR. TOBIN: My only purpose in bringing out these facts is that there is a problem here, that has not been answered in the report of the committee; that it was found in New York, through this statistical study, that there is something more to be done, and that is to know whether the banks are on a par today in the payment of their taxes with other business in the state.

MR. LINK: It is an unusual situation; I know that it has always been our policy to have taxpayers of the class of property interested on a committee. I don't know why that was not done—very likely it was an oversight in this case. The rest of the conference are, I take it, practically a unit for this amendment, but we have just a few delegates—Mr. Tobin being one—who see this from the contrary side. I feel we ought to be fairly generous.

OSCAR LESER: I move we give him ten minutes more.

(Motion seconded)

MR. LINK: It is a big handicap for a man handling a big subject, and I insist that we leave it to the discretion of the chair.

CHAIRMAN HAIG: If there is no objection, Mr. Tobin will continue in the discretion of the chair. Since we limit the regular papers to twenty minutes, fifteen minutes should be the maximum for discussion.

MR. TOBIN: Perhaps I may be permitted to hand in something, so as to make the record complete, which is my only purpose in speaking on the subject. If we can save time in that way, I would just as soon do it. I believe the record ought to be complete in some way on the other side.

It is plain that the taxpayers were not represented. As I say, it may have been impracticable to include them on the committee, but there is a larger task before us than the mere taxation of banks, in this particular issue, and that is whether this conference is going to enter upon the job of legislating. The report of the committee as submitted carries with it legislating on the part of this conference. I feel that we should reaffirm our resolution of last year—the resolution passed at Bretton Woods—but desist from legislating in the premises.

Senator Law himself will recall, as a member of the senate, and Senator Lord, when he was a member of the Minnesota senate will appreciate, that it is quite improper for those outside—particularly bodies of this sort—to indicate the manner in which the legislation should be passed. I urge you on this particular issue, that we confine ourselves to what the constitution provides, and that is to simply announce our sound judgment on economic problems, and not to go into the legislative business.

If time would permit, I would take up some of the decisions Senator Law referred to. In his paper reference was made to the Hinson case and the District of Columbia case. It is quite plain that those cases involved taxes and assessments which were entirely under the jurisdiction of the United States Government and that you have an entirely different situation when it comes to a tax assessed by the states. I am quite satisfied that the conference should stand upon its resolution of last year and refrain from telling Congress what they shall do; in other words, to sit here and legislate is entirely outside of our province, and I will rest by asking that we go back to first principles—the intent and purpose of these conferences — and confine ourselves entirely to announcing sound economic principles, and not enter upon a field which is entirely foreign and which was never intended by those who have the best interests of the association at heart.

I am quite satisfied as a delegate and a member interested in banks to have the resolution of last year reaffirmed, but to go further than that I think is a mistake, and one of those mistakes to block us at a later time — a precedent created that you will have trouble with if you make it a precedent at this time.

I urge that we go back to first principles; examine our constitution and be satisfied to keep ourselves within our proper scope, and not attempt to legislate. Bank taxation will be the burning question of this conference. Next year it will be something else. In view of the fact that the bank acts in a sort of a dual capacity, in that it pays the tax for the taxpayer, I feel that we should go slow in making a record here which concerns a large number of taxpayers in the states. I have in just a brief way indicated that there is a sharp difference of opinion as to what should be paid by the banks of New York, as demonstrated by this legislative committee. There is the further fact that we have in New York a billion dollars of money invested in banking, in competition with banks, which pays nothing and which will not be covered if the Kellogg bill is passed.

It is one of those big jobs we ought to move slowly on, and not say this is so and so, because we have an immediate need for it, but satisfy ourselves with the task, as Professor Adams well stated, of keeping to fundamental facts and moving along in educational work. Thank you very much.

CHAIRMAN HAIG: The chair would like to impose for the privilege of making one remark with regard to the material which Mr. Tobin has quoted. It is true that we began in New York to look into this question of bank taxation, before the Richmond decision was handed down. We were then concerned to know whether the tax which we were imposing on national banks was high or low, as compared with business generally. This tax had come to occupy a position in the New York system which was perhaps a little different from that of some other states, in that it was quite distinctly a business tax, in the sense of the term business tax as used in our model plan, and we wanted to see how the thing measured up as compared with the 4½% on business corporations. It is true that we found national banks were taxed high, as compared with business corporations generally, but it does not seem to me that that fact justifies the conclusion that is drawn by Mr. Tobin at all; that there is any doubt about what should be done. The committee was quite prepared even to recommend that the rate of business tax on banks be adjusted to the rate of business tax on business generally, which would be fair enough, but it does not seem to us fair to conclude that because the national banks have under an arbitrary business tax unfortunately for a long time been paying a little more than all other businesses, they should forthwith be permitted to hide behind 5219 as it now stands.

MR. TOBIN: I should like, if it may be permitted, that you take the conclusions of the committee as a matter for the record. I intended to ask that, but there seems to be some little hesitancy because of time. I should like to ask that the conclusions of the committee, as concerns national banks, be made a part of my statement.

THOMAS S. ADAMS: I should like very much, for my own personal satisfaction, and I think many others here would also like in due course, to study the strongest arguments that may be made against the recommendations of our committee, and President Lord's conclusions expressed last night. In other words, I should like to hear the other side expressed in its strongest form. Now, why would it not be within the purposes of this organization to have the other side printed in the report? It has seemed to me somewhat of a one-sided case, but I thought that about other cases in the past, and in considering the best statement of the side I considered weak, I have changed my mind. Now, I should like to see the strongest argument that can be made.

CHAIRMAN HAIG: Well, how would you suggest that be done?

MR. ADAMS: That we authorize leave to print, and I am sure Mr. Tobin, who is given leave to print, will construe that properly.

CHAIRMAN HAIG: Will you make a motion to that effect?

MR. ADAMS: I move then that Mr. Tobin, or someone to be designated by him, or the members of this Association, who believe in the retention of section 5219 be given leave to print their side of the case in the forthcoming proceedings.

JOHN E. BRINDLEY: Motion seconded.

OSCAR LESER: But they are not to absorb the whole volume.

MR. BRINDLEY: Not more than the space taken up by Mr. Law's report.

MR. ADAMS: Yes.

MR. TOBIN: I don't want it understood that I am opposed to the amendment of 5219, or that I am opposed to this conference going on record. I helped in a way in the preparation of the resolution of last year. My whole point is: don't let us go astray in this conference on a proposition of this kind, because it is bank taxation. My point is that we should not legislate here; we should be content with announcing sound economic propositions and stop there. If we are going on to tell Congress what it must do, we shall find our purpose will be cut very short. I want to thank the conference for the permission.

(Senator Law rises for recognition)

CHAIRMAN HAIG: There is a question before the house, Mr. Law. Professor Adams' motion has been heard and seconded. All in favor say aye.

(Ayes and noes)

(Motion carried)

SENATOR LAW: I wanted to refer to one other paragraph from this same New York report. It says at page 90, "the adoption of the recommendations outlined above"—that was for amending the state laws relative to taxing banks—"must await congressional action upon the proposed amendment to section 5219 of the Revised Statutes. *If a reasonable amendment is blocked* through the short-sighted opposition of a small section of the financial community, *the committee proposes* a plan to prevent the evasion by the national banks of their fair share of the governmental burden, through a *return to the taxation of such moneyed capital as competes with national banks, at the same rate as that imposed upon national bank shares.*"

MR. TOBIN: That wants to go in. I am quite satisfied it should go in, because that is the main issue. It is this other moneyed capital—$1,000,000,000 of it—that is not paying taxes in New York today.

MR. LAW: I cannot agree with the conclusion that it is not taxed. I will agree that it is not taxed as high as it ought to be, but the remedy for that is not to exempt still more property.

MR. TOBIN: I am for that.

MR. LAW: The remedy is to increase the tax on the co-partnership banking capital, and a bill to accomplish that was introduced in our legislature last winter.

MR. TOBIN: I am for that, and we are all for it.

DR. ADAMS: I hope that before this discussion is over, if any person here believes in the preservation intact of section 5219, he will get up and state his side of the case.

CHAIRMAN HAIG: I think the forum is open. If anybody wishes to make a statement on that at this time, I will recognize him.

(Mr. Link rises for recognition)

CHAIRMAN HAIG: If not, Mr. Link, I recognize you.

MR. LINK: Mr. Chairman; ladies and gentlemen of the conference: I should first like to ask Senator Law if it is not true under the Kellogg bill that if we assess the stock, under the property tax, we are barred from the addition of an income tax?

MR LAW: The Kellogg bill does not change the existing situation in that particular. Does that answer your question?

MR. LINK: Certainly. I was concerned about that feature. I was afraid, from the way it read, that if we taxed the stock, under the property tax system, we could not in addition tax the holder of the stock under a personal income tax in the state.

MR. LAW: It is doubtful if you could do that now, but whatever the situation is under section 5219, as it exists today, it will be the same if the Kellogg bill passes. In that, the Kellogg bill is different from the original McFadden bill.

MR. LINK: Members of the conference: That seems to me quite unfair, because we are proposing, at least some states have now proposed and others are now proposing, to adopt a personal income tax. We have that matter up in Colorado at this time. We are struck from all sides for offsets. The farmers are contending very seriously that if they are going to continue to pay these high taxes on their land, that it is not fair, if they have a good year and make a profit, to make them pay another tax, and therefore they want the offset feature. The livestock men ask it; others ask it.

I understand, of course, that in Wisconsin there is now an offset feature on personal property, and I was very glad to notice in the press yesterday that the farmers themselves in Wisconsin — the

Non-Partisan League, I believe — at a meeting recommended that that offset be repealed; they have found that it is not correct in principle. I fear now that we are about to be bound under the bank situation. There is some doubt, to say the least, so that shows that even under the Kellogg bill we may have our hands tied by the unfortunate situation of Congress locking up the states, so that we cannot get a fair personal income tax.

Mr. Chairman, and members of the conference: I wish to say just a word about our worthy president Lord's record in this matter. We of course all know what a splendid man he is, and what a splendid state official he is, but to let some of you know how fair he is about this matter, I want to say that his life's savings are invested in bank stocks. I happened to learn that a year or two ago. See how impersonal he is; how fair he is about it. It is not a matter of philanthropy, of course. He used to be a farmer; he used to be engaged in other business; he found out wisely that that was the best investment he could make. I mention that just to show his splendid spirit in this whole fight.

As I see it—and I hail from an old general property state, where we are still trying to assess intangibles, under the property system—bank stock is different from all other kinds of intangibles—intangibles in the hands of private individuals — for this reason; that when an aggregation of men organize a bank and put in capital of, say, a million dollars; as soon as that bank opens its doors and gets to running normally, they have deposits running from five to no less than twenty times their investment, and thereby become a commercial concern. Their large profits, their chief earnings, are made from other money, not their own, that they hold. Therefore, it seems to me most unfair to advocate any system that won't permit the value of bank stock to be assessed under the property system in the location where the bank is, at the regular real estate rates.

Now, further than that, I of course would not go, and I want to say that I certainly hope that I shall never be a party to this everlasting idea of wanting to hit corporations with special taxes.

Mr. H. C. McKenzie of New York: I just want to say, Mr. Chairman, that I have a strong sympathy for the position just taken by Mr. Link. As a matter of fact, I suggested that same thing last night to President Lord and to Mr. Law; I asked them whether, in their judgment, it would be a satisfactory solution of the problem if we could get the American Bankers' Association to agree to treat the banks the same as real estate is treated, in the locality where the banks are located.

In a conversation I had with a representative of the bankers' association a couple of weeks ago, I was told that the thing that was especially objectionable to them was being put in a class by themselves, where they could be discriminated against. Now, as

far as I am personally concerned, if we can get the American Bankers' Association to agree to such a situation as that, we can go to our farmers in the United States and say that all we are asking is that the bankers be treated the same as the farmers, and it will take away the excuse, or the reason they give for objection to modification of 5219; that they are going to be segregated and put in a class by themselves. The owners of real estate are the most numerous class of people in this country, and it will answer, in my judgment, many of the objections that are raised. I should like to have the opinion of this body here as to whether it is a satisfactory solution or not, so that we may know definitely how that stands.

Mr. Tobin: I introduced a resolution, I think the first day we were in session, covering this particular proposition. It broadened the resolution of last year, and I believe it covered just what is desired, as expressed by the last two speakers. It may not be quite broad enough, but it made the base more complete, as I term it. It was largely drafted upon what I felt was the opinion of the Davenport committee, and I should be glad if you would examine that original resolution and see if it is correct in its base. It may need to be broadened, made more general; but my purpose was to get away from banking business by itself so that there would not be this constant fear that if you changed your system locally within the state, you would have to go down to Washington and have that section amended.

Thomas E. Lyons of Wisconsin: I want to point out first, in respect to what Mr. Tobin said when first on his feet: Concede that the taxation of national banks in the state of New York is excessive; what has that to do with the taxation of the national banks in Minnesota, in Maryland, in Pennsylvania, and all the other states that are affected by this decision? There is nothing in the proposed legislation, or in the resolution proposed to this convention, to prevent the state of New York from adjusting the tax on national banks on an equality with other property, or other business. That is the business of the state of New York. What we, and those I take it who desire an amendment of 5219, are demanding is to get exactly this thing; to restore to the states the power to tax national banks as they see fit, providing they do not discriminate against those banks, in favor of other classes of property.

As we stand, our hands are tied; we cannot do anything. The situation in New York, in Massachusetts, and in Wisconsin, where moneys and credits are exempt outright from the property tax; where, under the old decisions, there is no authority to tax the income, what can you do with national banks? You cannot tax them at all. Should we sit idly by and have our hands tied, while they

are squabbling about their differences in the state of New York? That is the moral to be derived from this suggestion that we go slow in New York. There is nothing in what is proposed to prevent you from settling your own domestic difficulties. We want the same right, and that is all that is desired by the committee and all that is demanded from Congress.

Now, just one other word; I submit that the whole matter of the situation in New York is immaterial and irrelevant to the real controversy involved here. The weakness of our attempt to secure appropriate legislation is in the fact that the Richmond decision affects only about fifteen or sixteen states. The states which now have a general property tax, with a provision either incorporated in the constitution or in their statutes for the uniform taxation of all classes of property may go on and tax national banks today exactly as they did before. They are given that right, at the expense of other states, because they have an idle formula in their statutes that all property shall be taxed alike. Everybody knows it is not taxed alike. Take Illinois, across the line from Wisconsin: Wisconsin has its hands tied and its feet hobbled, yet Illinois is free to tax every national bank within its borders according to the way it has been assessed or taxed heretofore. Illinois does not tax national banks by the same measure or to the same extent that Wisconsin does, or proposes to do, or that Minnesota does, and will continue to do, if permitted. Shall we then be deprived of the right to tax our own banks in our own way? I say "our own banks," and I say it meaningly, there is nothing essentially public or national about a national bank. It is a depositary for public funds many times, but nobody will believe that the inducement of a stockholder in a national bank in these late days is the performance of a public service; it is for the purpose of making money, and they have made money, and they have not been prejudiced or injured by the systems of taxation in effect. Then why should they now be given a privilege or permitted, through a mere technicality, to enjoy one which they accidentally received.

One word more: I started to say that the weakness of our attempts to secure appropriate legislation is the indifference of the states which are not directly affected by the decision, and I am therefore speaking primarily to representatives from those states where they still have the general property tax and are permitted to tax national banks in the same way as heretofore. We must rely upon them and they owe it to us in this situation to cooperate in the securing of an appropriate amendment of section 5219. Twenty states were represented at a meeting in Washington—or approximately that number — but practically all were the states which were affected by the Richmond decision. The states not directly affected were not represented, and the result was that the

representatives in Congress from those states, and in the senate, were either apathetic or indifferent. They were not stimulated by home agitation or demand, and the result was that they practically paid no attention to this controversy.

Now, we should act as a unit, in order to exert an influence as a body. We have already gone on record as demanding an amendment to this statute giving relief to states which are prejudiced by it, and I submit that both kindness and duty should prompt the representatives from these other states to assist in securing appropriate legislation.

Just one more word and I am through. As it seems to me, I don't know of a single instance that furnishes better food or better material for agitation than to point out that this, the most prosperous, safe, and on the whole most successful class of business in the whole country, is openly, and I might say, in a sense, defiantly, resisting the payment of a reasonable tax. If there is any person who is looking for material to go out on the stump, he cannot find any better material than that, but I should prefer that that be eliminated from the campaign.

PHILIP ZOERCHER of Indiana: The gentleman from Wisconsin just stated that it only affects about sixteen states. Now, I want to tell him how it affected Indiana in 1919, when the tax commission prepared a bill for a new tax law. In Indiana, after a good deal of study of the workings of the laws in Minnesota, Kentucky and Maryland, where they had the classification of property; following a decision of the supreme court in, I think, 173 Indiana, that where all the property in the same class was valued for taxation purposes on the same basis, the equality provision of the constitution was satisfied, we conceived the idea of placing intangibles in a class by themselves, and allowing the taxpayer, after he had made full return, to ask for a deduction of 75%, thereby placing the value for taxation purposes on a 25% basis. We had met with the bankers' association in Indiana and we thought they were all heartily in favor of it, but when we were trying to get the matter through the house, we found one morning a printed circular on the desk of every member, stating that if the sections incorporated in that law were passed, under section 5219 of the federal statutes—and the section was set out in full—we could only tax the bankers in that state on the 25% basis. Of course that created consternation among the legislators, and we couldn't get anything. An answer was made, setting out some of the decisions of the Supreme Court, but this crafty attorney came back and said that those decisions changed the working of the statute, and that the courts might change their opinions, and the warning he gave at that time turned out to be well taken. The other day I was present at the Indiana bankers' association meeting and found a high-class set of

men. I heard an attorney there state that the defeat of the McFadden bill was due to the work and influence of the American Bankers' Association. If it be that their influence has been so potent as to defeat what seems to everybody to be simple justice, why should not those of us who are meeting here make such recommendations as we feel will meet the situation?

I take it that the prime object of a taxing official is to do absolute justice to everybody in the state, but this section as construed now by the supreme court places the banks of the country in a favored class, and by doing that it places an additional burden upon real estate and other property of the states.

THEO. S. CADY of Missouri: Mr. Chairman, I am not certain whether members or committeemen from the American Bankers' Association were invited to attend the conference or not and appear on the program, but I am rather under the impression that they were not, but Mr. Richards, secretary of the Minnesota bankers' association is here this afternoon, and I think it would be well to invite him to speak.

CHAIRMAN HAIG: We shall be delighted to hear from Mr. Richards.

MR. RICHARDS: I thank you for the invitation, and I assure you that I shall not take even the five-minute limit.

Gentlemen, it is a privilege for me to try to give you in just a few words some of the slant that the bankers have on this proposition. I am not here to argue the matter at all. I have had something to do with the discussion of this vexing problem, and if I can give you a little angle of what the bankers are thinking about, it may be of some advantage.

Mr. Chairman, I defer to no one in my high regard and friendship for your president, Senator Lord. We in Minnesota are proud of Senator Lord as a citizen. We know his efficiency as a public servant, and we have no quarrel with the chairman of our tax commission; I assure you of that. In all kindness, however, Senator Lord's ideas and the ideas of some of the bankers unfortunately differ in a few regards.

Now, let me disillusion you if you think for a moment that the banks are trying to evade the just proportion of their personal property tax burden. I absolutely deny it. As an illustration, let me call to your attention that after the Richmond decision was handed down, some of the most eminent attorneys of Minnesota stated that undoubtedly the personal property tax assessed on the shares of bank stock for 1921 was invalid; it brought up the question as to whether the bank had a right to pay that tax for their shareholders or not; and the national bankers did not know what position to take. It was discussed at a meeting of the governing

body of the organization which I represent as secretary — the Minnesota Bankers' Association — and in the judgment of those men it was considered unwise for the national bankers to object to the payment of their taxes. We asked them to pay their tax as usual, and for the national bankers of Minnesota, I am proud to say that every bank but four in the state paid its personal property tax as usual, although their attorneys reported to them that they were assuming the liability that any stockholder could recover the amount of the tax which they had paid for him.

There is no disposition on the part of the national banks to avoid the payment of their just portion of the personal property tax burden. They don't want, however, to pay more than their just portion of that burden, and that is one of the reasons why they don't want section 5219 amended. Gentlemen, the bankers feel that there is a danger in the proposal now before the senate. If I read history correctly, that plan was tried for the four years from 1864 to 1868, and was proven a failure. As a matter of fact, when Congress granted the authority to the states to tax the shares of national banks, it was with the proviso that the tax should not be greater than that assessed and collected on the state banks.

After a period of four years it was found that the states and localities so oppressively taxed both the state and national banks, that Congress came in with the present proviso, linking up the tax on the individual with the tax on the shares of national banks. The banks believe, gentlemen, that there is an element of protection in that, and all they ask is a fair deal, and to retain that element of protection. Now, if some genius will find some limit or measure, so that that fundamental principle is not sacrificed, it will be agreeable to the bankers, and they will pay their taxes. They would like to pay taxes which are no greater than taxes paid by other corporations, but they are not doing it now.

If you had a way whereby you could accurately find what the money invested in industrial corporations pays in your personal property tax, you would find that it is very much less than the tax on the money invested in the shares of national banks. I tried in this city to make a little investigation. I took two manufacturing concerns, three milling industries, two jobbing houses, and two large department mercantile establishments, and from the best information I could obtain I found that the average rate paid by the nine industrials was three-quarters of one per cent.

Dr. Adams: On what basis?

Mr. Richards: On the money invested—capital invested—I believe that is a fair comparison, because the capital investment of these institutions is for the same purpose as the capital investment of national banks; it is for the purpose of making a profit.

In Hennepin County the tax on the shares of national banks was 2.58%. If there is any good reason why national banks should pay so much more than such institutions, I don't know it. What is the tax on real estate in Hennepin County, Senator Lord? Can you tell me?

MR. LORD: I could not say just what the rate is; probably in the neighborhood of two per cent on true value.

CHAIRMAN HAIG: Is it the pleasure of the meeting that we permit the gentleman more time?

MR. RICHARDS: Are my five minutes up? If you will listen one moment, I shall be brief. Our association tried to get the opinion of the bankers of this state relative to what was their wish; what was their judgment in the matter of federal legislation. A committee was appointed, and adopted a resolution, pinning their argument largely against the surrender of the fundamental principle involved in 5219, which I mentioned as linking up the individual with the bank.

The little pamphlet which I have here was sent to each member of our association—both the state and national banks—and we asked for a referendum vote. We asked them to approve or disapprove of that resolution by a vote. We have in our association a membership of 1478 bankers. We received from that request 1032 replies. One thousand and seven of those replies favored the resolution adopted by our committee, which disapproves of the measure at present pending before the senate. Twenty-five only approved of it. In addition to that, the Minneapolis clearing house association went on record as disapproving that pending amendment; so that all of the bankers do not approve the amending of section 5219. Gentlemen, there are, as Mr. Tobin said, two sides to the question. If some genius will find out a measure or limit of taxation which shall be granted to the states, so that it will be just, it will be what the bankers hope for. They think that if it is necessary to amend section 5219 in order to adjust tax laws, it ought to be amended along those lines. In conference with Senator Kellogg recently, the suggestion was made that the measure might be an average of the rate on tangible personal property, and Senator Kellogg said he would approve it, and he would also include real estate with it. Now, that is a suggestion. I believe there is a way out of the difficulty, and I hope that some way may be devised in this meeting. Gentlemen, I just give you the suggestion; it seems to me quite possible to work it out.

MR. ZOERCHER: May I ask one question: Would you think the bankers would be satisfied, if they were to be assessed as other tangible personal property or real estate?

MR. RICHARDS: Yes, sir, I do.

MR. ZOERCHER: I thought so.

W. A. HOUGH of Indiana: I wonder if the bankers are satisfied with the present methods of taxation in Minnesota?

MR. RICHARDS: There has been no opposition to it. I am not in a position to say that the bankers are satisfied. They are satisfied that they are paying very much more taxes—mind you, I speak my own mind—that shares of stock are taxed very much more than the money invested in other corporations. They have not objected. That does not necessarily mean that they are satisfied.

MR. HOUGH: You understand, of course, that under this decision, the method used here is absolutely illegal, but still is it satisfactory to the banks.

MR. RICHARDS: No, no. I understood your question was whether the banks are satisfied now.

MR. HOUGH: Yes, with the method that is used for bank taxation.

MR. RICHARDS: They are satisfied as well as they can be. They know they are paying more taxes. They don't, however, ask any special privileges; the national banks don't ask any advantages over state banks. We hope that if the federal statute is changed at all, our laws will be changed so that they will conform. Some other plan will probably have to be devised.

MR. HOUGH: If your law is changed to conform with the law of the United States, then you must abandon the classified property tax altogether and tax all moneys and credits in the hands of individual citizens exactly like the tax on shares of stock of banks.

MR. RICHARDS: That is done now in a good many states.

MR. HOUGH: It is done in many states. There is a feeling that there ought to be a classification of property, which will result in a better taxing system. Here is a bar that stands in the way of any state adopting a classified property tax. If there is any better method to measure the manner in which national banks can be taxed than saying they shall be taxed exactly as state banks and other money invested in the banking business is taxed, what would it be? What could you suggest as a better method than that?

MR. RICHARDS: I think the suggestion that was made to Senator Kellogg would beat that all to smithereens; the average rate on other tangible personal property.

CHAIRMAN LORD: What would be the average rate, Mr. Richards?

MR. RICHARDS: We have a 25% rate of valuation on one class of property, 33⅓ on another, 40 on another, and 50 on another.

CHAIRMAN LORD: How would you average it?

MR. RICHARDS: Well, senator, I am not a tax commissioner, but I should think—

CHAIRMAN LORD (interrupting): You have offered a suggestion. I simply wanted to get an answer to my question, that is all.

MR. RICHARDS: If it is impossible to average it, I believe that the bankers would be satisfied if they were not taxed any more than some other certain class in that classification of property. This other gentleman spoke about the surrender of our moneys and credits tax. The bankers would regret the surrender of that tax. No question about that at all.

MR. HOUGH: The only way to avoid surrendering it is to amend section 5219.

MR. RICHARDS: We hope if that law is repealed a better law will take its place. Put all other personal property in the same class with them and they would be satisfied. The bankers would regret to see you abandon the principle of linking up the individual with them, because the individual can correct any over-taxation by his vote, and the bank cannot.

MR. HOUGH: You are placed, now, in this inconsistent position; that the bankers are in favor of the three-mill tax in your state on moneys and credits, but they are opposed to amending the section which requires banks to be taxed at exactly that same rate; therefore you must repeal your state law and tax moneys and credits at their full, true cash value. One of those two things must be done.

MR. RICHARDS: The moneys and credits tax law has been successful in this state. It has brought out a lot of taxable property on which taxable income is received. It is unfortunate that the tax rate has to be made so low in order that people will be honest and report their property for taxation. The tax is an act of expediency and not one of justice. We believe that there is virtue in retaining the moneys and credits tax, and I think the bankers would seriously regret seeing it repealed. It does seem that section 5219 will have to be amended in order that the personal property tax laws of Minnesota may be continued. I will admit that. It certainly looks so. We hope that there will be a way found, if that law is amended, so that the fundamental principles now involved in the taxation of shares of stock of national banks will not be surrendered, and we hope that some genius will find a way of arranging it so that it will be satisfactory not only to Minnesota but to the other states.

CHARLES J. BULLOCK: Let me ask the gentleman a question.

CHAIRMAN HAIG: Judge Leser sought recognition first, immediately after he has had his question, I shall be glad to recognize you.

OSCAR LESER: I want to say that a genius has been found to lay down a rule for the ample and full protection of national banks, and that genius is Senator Kellogg, whose bill is now pending in the senate. It puts national banks in the same class with state banks and trust companies. In fact it puts them in the class with other banking capital. Now, what danger is there — what prejudice is there against banks or national banks? There are 28,000 national banks in the United States, having about 500,000 stockholders, having I don't know how many hundred thousand employees, friends, relatives, and customers; they are safely anchored, and there is no danger of any prejudice or any unfair action toward national or any other kind of banks.

In my own state what do we do about national banks? We exempt all bank deposits. We have given banks a one per cent rate, although at the same time we put trust companies at a two per cent rate, for six years, until that law was reduced to the one per cent rate, and to this day we still impose a local three per cent rate on surety and insurance companies. So much for the prejudice against banks in my state.

The Pennsylvania banks have enjoyed a tax rate of four mills on the hundred dollars for over thirty-five years, and there is no tax in Pennsylvania imposed on bank deposits. In New York other property pays the full local rate, which ranges anywhere from one-half to three or four per cent, and banks pay a rate of one per cent.

Under a court decision, in New Jersey, banks are allowed to deduct from their share assessment the exempt securities they held, leaving practically nothing to be taxed, because they are allowed to deduct not only the securities in which the capital was invested, but any of the government bonds they had bought with borrowed money, and there isn't a bank in the United States that could not thus take care of its entire capital. In fact, it was a victory for the banks. They attempted to cover it up, by voluntarily continuing to pay the tax for a year or two, until there was a compromise measure, under which they paid seventy cents per hundred dollars. So much for banks in New Jersey.

In Rhode Island they had the same experience. I think all the banks in Rhode Island paid in one year three or four thousand dollars taxes, other than on real estate. The difference is that in Rhode Island they were strong enough to prevent any change in the law. They don't pay any more today.

In New York, under the old system, before they introduced the income tax, other moneyed capital was supposed to be taxed at the general property rate prevailing locally. The amount collected was practically nothing, because people were allowed to offset their debts, and in other ways to evade the tax. Under the income tax law, this property, which practically paid nothing before, today pays $35,000,000 into the state treasury. Will you tell me the banks are hurt by that? We actually had the argument made before the committees in Washington, that where they had this general property rate—where intangible property and general credits paid nothing—the banks were perfectly happy. That is the condition you have where you have a theoretical law, that puts the same rate on all property, including bank shares and real estate. The other intangible property escapes almost entirely. There you have no violation of 5219, but the moment you introduce a sensible system, mostly promoted by the bankers themselves, which reaches those forms of property and puts hundreds of thousands into the treasury, for the benefit of the banks, and other people, then suddenly banks are injured.

Charles J. Bullock: I should like to ask the gentleman from Minnesota whether he would accept the Kellogg bill with this proviso, that the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital employed in the business of banking, provided that such rates shall not exceed the rate levied upon real estate in the state where the bank is located. Would that be sufficient?

Mr. Richards: Why couldn't you make it tangible personal property?

Professor Bullock: I will tell you. No commercial state that ever lived, whether it is living by trade or otherwise, will enforce 100% a tax on tangible personal property at the same rate that is levied on real estate. You will have tax-dodging and law-evasion as long as you try it. Retail trade may stand such a tax. A tax at the rate of two per cent, levied on merchandise in wholesale trade, will drive wholesale trade out of the state that tries it, and therefore no state will enforce the tax, and if you put tangible property in, you tie the states up to a continued system of law evasion.

The first paper that was presented in these conferences on the matter of the classification of property was, I think, the paper I read at the Louisville conference, on a classified property tax. I pointed out there something that I have never seen any reason to change my mind upon—never found an honest-minded thinker or disputant who denied the truth of it—namely, that if you are going to have an enforced system of taxation, that result is obvious. Of

course, tax laws ought to be enforced, but I have been preaching for twenty years that tax laws should be made reasonable, and then should be enforced 100%, or as near 100% as you can get with any law of man's contrivance. Now, is there anyone in this room who thinks that a state like New York, or a state like Massachusetts or Illinois, Missouri—any state containing a large city, having large wholesale distributing trade — will enforce 100%, the way the Massachusetts and New York and Wisconsin income taxes are enforced, by sworn returns, a tax on merchandise at the full valuation and at the rate now prevailing, applicable to real estate? I don't believe it. I have never found a man who would take up that challenge and say that he, from his study, would favor the 100% enforcement of a law calling for the collection of a 2% tax on the value of merchandise employed in wholesale trade. It would simply drive that business out of the state. Wholesale trade is not done on a margin that can stand it, and when the gentleman says to put banks in with tangible personal property, he lays down a condition that is absolutely impossible of fulfilment, if you mean 100% enforcement of your taxation laws. This state in the old days used to try to tax grain at Duluth. Wisconsin had a law for the taxation of grain at Superior. Neither state enforced the law. Both had tax commissions, with the power to go down and enforce the law, but they never did it. This state, and I think Wisconsin too, changed that tax to a bushel tax, at a reasonable rate, that would not drive the grain over into the rival state, and now I think the law is enforced. I dare a state to levy a 2% tax on tangible personal property, and then enforce it as tax laws ought to be enforced. If that is the condition, then either the states are tied up to an unenforceable system of taxing tangible property or the proposed amendment is of no effect.

I have tried very hard to think of restrictions. I appreciate the gentleman's point. It is perfectly true that there have been rare instances in which states have embarked upon unfair taxes against banks. They are rare, not likely to happen, but it has happened and we cannot waive that out of consideration, but I cannot find any restriction that is practicable to put in here except that of the real estate rate. The average of the real estate rate could probably be computed. You know in any state, even if you classify property—taxing some at 30% of true value and some at 40%—you know how much you have in the 30% class and how much in the 40% class, and you can compute a true average, so that such a provision, putting in the word "real estate", which would not amend this very seriously, would prevent states from putting banks up higher than real estate, and would not prevent any reasonable classification of real estate that a state wanted to embark on. Personally I don't believe in the classification of real estate; I don't be-

lieve in the Minnesota method of classifying real estate or any other method that has ever been worked out. I believe in a level assessment or valuation of real estate for taxation. But my suggestion would not prevent classification.

Now, that would be a trifling amendment that Mr. Law would accept in a moment, I have no doubt.

WALTER W. LAW, JR.: Personally I should be entirely in agreement with that, Professor, and it would not tie the states up. I have racked my brains for a year, because we have this problem in my state, and I have not thought of anything else, and none of the bankers or their attorneys have been able to make any other practical suggestion.

MR. LESER: What would you do in a state like Maryland where the shares of a bank are taxable in the locality where the stockholder lives, so you have varying rates of real estate tax?

PROFESSOR BULLOCK: We are talking about national banks.

MR. LESER: So am I.

PROFESSOR BULLOCK: And are they taxed in the town where the bank is located?

WALTER W. LAW, JR.: Yes.

MR. LESER: They have to be taxed in the state where the bank is located, but the shares are taxed where the stockholders reside in the state. It happens that now we have a uniform rate, but years ago we had a local rate.

CHAIRMAN LORD: The shares are taxable in the city or village where the bank is located.

PROFESSOR BULLOCK: The banks have a case, or part of a case, at that point. I don't want to go into ancient or recent history, but there have been examples of states that have set to work to get the banks. There is some protection in the revised statutes which would be taken away by this bill, because states have started out to get all banks—state as well as national. Section 5219 now prevents them from getting national banks unless they try equally to get state banks, but they have gone gunning for both.

MR. LESER: Was there ever a state which undertook to tax national bank shares at a higher rate than real estate?

PROFESSOR BULLOCK: We have had some recent state classifications that put in a class by themselves public utility stocks and bank stocks, and in a second class, real estate.

I don't want to take more of your time, but I am greatly interested in the suggestion of the gentleman that with some kind of a

limitation the bankers would not oppose proper classification of intangibles at rates that will bring in revenue, and that they don't want to tie the states up to the general property tax.

Now, the tangible personal property thing, it seems to me, to be perfectly frank, is not practicable and would tie the state up to the attempt to reach some kinds of tangible property, like merchandise in wholesale trade, at rates that they will never enforce.

CHAIRMAN HAIG: In passing, this would not be at all applicable to New York state, for the simple reason that we have given up taxing personal property, excepting a vermiform appendage, which will be operated on next winter.

MR. MCKENZIE: As I understand the position of your bankers' association, it is that you object to being segregated in a class as banks. The suggestion I want to make is whether, if I reverse Dr. Bullock's proposition and suggest that instead of placing you in a class with state banks, banks and trust companies be pushed right back to where you were originally, would that be satisfactory? Originally all the states had a general property tax whereby you were classed with real estate and all the other property. The gross element in that system of taxation was the real estate. Now, if we put you back in the class with real estate and taxed you on the same basis, with a guarantee that you should not be discriminated against as between national banks and state and local banks and trust companies, would that meet your objection?

MR. RICHARDS: I think it would be well worth figuring on. I cannot commit my association. Personally, I think it would work out. I take it that all the bankers want is some measure of limit of taxation. They don't want you to put them in a class by themselves. If you have to do that, but hitch a limit to it, I don't see why it would not be workable.

MR. MCKENZIE: Do you mean a limit on real estate also?

MR. RICHARDS: Wouldn't the tax on real estate take care of itself?

MR. MCKENZIE: When the business goes busted, what they do is put an additional one per cent on real property. If they put it on the farms and buildings, I think they should put it on the national banks, if you were classed with them.

CHAIRMAN LORD: Mr. Richards rightly said that there were two sides to this controversy, and there are. On the one side is a great special interest, asking a special favor; on the other side is the common good of all the people of the country. Now, which should prevail in the matter? which should give way? A law that is designed to benefit all the people, including the banks, or a law

that is designed to give the banks a special protection that really does not protect them at all in the general property states, where they receive their principal support?

I believe Professor Bullock's suggestion is a solution of this whole thing. So far as I am concerned, I should be perfectly willing to have banks hooked up for taxation purposes not only with banking capital in the state, but with the real estate in the state, and if this were done they would be taxed on a parity with more than seven-eighths of all the property in Minnesota. That ought to be a perfectly safe thing for them.

You cannot average the tax on bank stock with the tax on household goods. We in Minnesota may want to exempt household goods. There is a very strong feeling throughout the country at present that household goods might well be exempted, in the interest of fair taxation. You would not want to say that because we exempted household goods, therefore bank stock should also be exempted, would you?

MR. RICHARDS: No.

CHAIRMAN LORD: I feel sure that if you had the state banks and private banks included in such a law, that would prevent any possible discrimination on the part of the state legislature as between banks and other banking capital. And then if you included real estate, you would put banks in a position where they would stand on an equal footing with all of the real estate in the community where they do business. That is exactly the way the banks are situated in Minnesota today, except that we have this three-mill tax. We tax bank stocks in Minnesota just exactly as we do the little home in the village or city where the bank does business. We tax them just exactly the same as we do the big office building that pays an infinitely smaller return than bank stock.

That certainly would be ample protection for the banks, and no tax legislation could possibly be enacted by the states that would be harmful to them or do violence to them in any way. I hope the banks may accept this proposal as a solution of the whole trouble. It would have my support, and I am confident it would have the support of this association.

H. S. VAN ALSTINE: We have heard a great deal about the fear on the part of the banks of discriminatory legislation if 5219 is amended, as proposed in the Kellogg bill. I have come to issue with the Iowa bankers' association on that same point. One would think that if 5219 were amended, straightway the banks would be taxed out of existence.

Now, I want to submit as a fair proposition, is there a bank in the country that realized that they had any such protection as they now have under this decision, prior to that decision? The banks

have gone along for fifty years under a law which was administered precisely as we now want 5219 as amended to be administered in the future. I submit that there is no more danger and that there is not as much danger today of discriminatory legislation as there was in years past, when conditions were less settled. I would not be willing to concede the amendment suggested by Professor Bullock. I don't know any good reason why the banks should have a special law, protecting them against higher taxation than the average of other classes of property, any more than the manufacturer, the butcher, or the broker. If any state is taxing their banks too high, it is up to the people of that state to put their own taxation house in order.

F. E. Putnam: I want to say one word to supplement what Mr. Lord has said. I had something to do with placing him in the position where he is, and had something to do with passing the present amendment to the constitution of Minnesota, relating to taxation, whereby it was possible to classify property. Now, whether it was a mistake or a good thing, time alone will tell, but we are trying to work it out on the classification theory. It has not worked long enough to determine whether or not it will be ultimately successful or the best course of taxation.

I was somewhat amused when the representative of the Minnesota bankers said that the banks did not want to be put into a class by themselves. The very amendment that they are fighting for puts them in a class by themselves, where they can dictate to a state like Minnesota just what its rate of taxation shall be, and that is exactly what, in my judgment, they are working for. When you get the bankers together, they won't accept the amendment based upon the real estate valuation at all, because they do want to be put in a special class by themselves, so that they can dictate taxation. Now, I have lived in a country town and have had something to do with the bank. I know something about that myself, and how the officers look at it. They are the greatest fighters against any taxation of any body of men you ever saw.

Now, the little, common, ordinary stockholder in a national bank or a state bank in Minnesota don't ever know that he pays a dollar of taxes on his stock. He never realizes it. I asked a stockholder in a bank that held quite a block of stock in a state bank the other day how much taxes he paid on his stock. "Well," he says, "I didn't know I ever paid a dollar."

No, it is the men behind the counter that are fighting this proposition. Let us just observe the history of a bank. I will take one in my own community, and the same thing applies to the older banks in all the cities of Minnesota. A little state bank was started with, I think, $20,000 capital in my town a few years ago. It is now a $50,000 bank, with something like $25,000 surplus and some-

thing like $15,000 or $16,000 of undivided profits, so that it stands on its face value at over $90,000. In addition to the original $20,000, only $10,000 in money has been put in as capital. All the rest of that value has been drawn from the community where that bank operated as profit to the original stockholders.

We classified on the ability to pay; where the least stress comes to pay the taxes, and I think that is the theory that is generally being adopted today. Now, what business that exists in Minnesota is better able to pay the taxes than the banks? There is not another business which exists in this state that is better able to pay—and why shouldn't they pay? The surplus of these city banks—the older banks—and the undivided profits, have all been built up without the expenditure of a dollar by the bank itself, and they have capitalized this surplus and do business upon it. Take the man who invests in the wholesale grocery business; he does not make money enough, in addition to a regular dividend, so that he can build up such a surplus and recapitalize himself for 100% more in the course of a few years. Not by any means.

I am absolutely sorry to see the banks of the state of Minnesota, particularly the national banks, step up here and attempt to hamstring the State of Minnesota in the collection of its taxes. What better argument can you give to Townley; what better argument can you give to any Bolshevik in the United States, than that the big banks of St. Paul and Minneapolis and Duluth, and the big bankers of the State of Minnesota, are fighting the question of paying their proper share of the taxes? And the banks come back and compare themselves with some other corporation that is not a moneyed corporation. They are digging a hole for themselves to fall into in the end. My time is up and I will quit.

A DELEGATE: I move that the gentleman's time be extended.

(Motion seconded)

(Ayes and noes)

(Motion carried)

F. E. PUTNAM continuing: They are digging a hole to fall into. I have seen these various things come along. I have seen the railroads taking the same attitude that the banks are taking. They fought every important measure; everything that was asked for the betterment of the public, and the result is hostile legislation throughout the forty-eight different states. Where the transcontinental lines run—perhaps ten states—you find that each state has a different set of laws covering the same proposition. Because they would not submit willingly, they find themselves today tied into a knot that they cannot untie; and sooner or later, if the banks follow out the same theory, they will get tied into a knot which they cannot untie.

Strange as it may seem, I have a few shares of national bank stock. I don't know that I pay a dollar of taxes on that stock, and I don't whine about the payment. I don't know a single stockholder in our bank, but one, who does whine about the payment of it, and that is the cashier. I am willing to pay. Based on the question of ability, I think that I am among those best able to pay.

Let me call attention to one other thing: The banks in the State of Minnesota pay about four per cent on time deposits. My friend the banker over there wants the same rate of taxation to be put upon the widow that has the 4% deposit in his bank that is placed upon his bank stock that pays him a dividend of from 6% to 12% or 15%, depending on the earning capacity of the bank. How much do the taxes take out of his dividend? They don't take very much, because all of his tax has been paid before he gets that dividend, and then he ordinarily has a surplus to add to it.

Now, on our 40% basis and in our city, where the tax rate is 75 mills, the widow draws 4%—$4.00 on the hundred, and it goes on the tax list on the basis of tangible property at $40, and 75 mills takes $3 of her income. There is the equality that the bankers, and their representatives here, are fighting for today. Is that equality of taxation? If it is, you have the fight.

Chairman Haig: Mr. Link of Colorado has called my attention to the fact that they have pending a constitutional amendment which has received the official approval of the bankers in their state, which provides for the specific proposal which Professor Bullock has made, and I think it would be interesting to hear something about that, and with your consent I should like to call on Mr. Link again.

Mr. Link: I should not say official approval of the bankers, but we have in Colorado now a tax revision committee of 135 representative business men from all sections of the state, which was brought about through the motion of the president of one of our state banks, on which committee are a number of our prominent bankers, and some of the representative attorneys of the banks. Before reading this resolution, I wish to say, with all due respect to the last speaker, that I don't think he got Mr. Richards right. Mr. Richards is not in favor of a law that will increase the taxation on the deposits, I am sure, because I got him clearly on the proposition that he wants to leave the classified property tax alone, and I want to comment on the fair spirit of Mr. Richards. Mr. Chairman and members of this conference, there was a time, in the old cowboy days of Colorado, when we used to bet—we don't do that any more; gambling is barred—but I would gamble that if we could get all the national and state bankers in the United States together with President Lord of this association, for forty-eight

hours, nine out of ten of those bankers would adopt President Lord's suggestion without the least bit of difficulty.

President Lord issued a letter of warning immediately upon this decision, about a year ago, that it would upset the only states in the Union which had progressed in taxation, that it would bar progress in modern taxation in other states. This constitutional amendment which has been agreed to by these business men, including representative bankers, for Colorado, speaks louder than oratory could. Mind you, it is up for vote now, it is being submitted to the Colorado voters. (Reading):

> "All laws exempting from taxation property other than that hereinbefore mentioned shall be void; *Provided*, however, that the General Assembly shall, and the people, acting through the initiative power reserved by them in this Constitution, may enact laws exempting from all taxation, except an income tax, money, notes, credits, bonds, book accounts, tax sale certificates, debentures, other written evidences of indebtedness, and all corporate stocks, except the capital stock of banking corporations, and at the same time enact laws imposing a uniform or a graduated tax on any or all incomes; and reasonable deductions and exemptions may be provided in such income tax laws."

Now, the striking thing there is that those bankers, after weeks of consideration, have consented to that constitutional amendment, and are advocating its adoption, which, under our Colorado situation, leaves banks taxed like real estate—the suggestion that Dr. Bullock made.

Now, just a word upon the practical side of this, and that is; members of this conference, and in particular you bankers; modern taxation, through income taxes or classified property taxes, is the greatest boon that could be imagined to the banking business, as their business would profit so much by it.

C. C. Converse of North Dakota: Mr. Chairman; lest my position be misunderstood, I want to say at the outset that I am in favor of the Kellogg measure, either with or without the real estate clause. The discussion has waxed somewhat warm here at times, and it has occurred to me that if one may judge the attitude of the bankers of the nation by the attitude of the North Dakota bankers, some of the speakers have been inclined to be unfair in their appraisal of the attitude of the bankers. Until the secretary of the Minnesota bankers' association spoke, I could not understand their point of view; I could not reconcile it with my conception of fairness. Now I can get their point of view, and while I think they are unduly alarmed, nevertheless I think we should

concede that they are entitled to their fears and entitled to be protected against a danger which they think they see.

I arise merely to narrate our experience with bank taxation in North Dakota. Bank taxes in North Dakota have been litigated—both the tax on national banks and the tax upon state banks. The national banks were successful in the United States Circuit Court of Appeals, in challenging the validity of the tax. While our appeal to the Supreme Court of the United States was pending, the Richmond decision came down, which knocked our props from under us. About the same time a decision of the Supreme Court of North Dakota was rendered, the effect of which was to say that on account of an enactment of the 1919 special session, and also a provision of the 1917 laws, North Dakota had no law under which bank stock could be taxed for anything—not a cent. To explain, we had formerly had a moneys and credits tax. The law which repealed that tax also repealed the tax upon bank stock. There we were, confronted with a situation where none of the banks had paid their 1922 taxes. A great many of them had declined to pay the 1921 taxes. Some had paid their 1920 taxes under protest, and some had paid their 1919 taxes under protest, so that some of the national banks were in position — having paid their taxes under protest — where they could recover every dollar they had paid for 1920 and 1921, and could escape taxation for 1922. But instead of doing so, they invited a conference with the state taxing officials, and as a result of that conference an agreement was entered into with the executive council of the North Dakota bankers' association, under the terms of which the banks agreed to pay taxes for those three years upon the same basis as the taxes levied upon stocks of merchandise and upon residences—at 50% of the full and true value, whereas they had formerly been assessed at 100% of full value. To illustrate the fact that they were taxed more than any other class of property in North Dakota, and therefore that bankers are not without some justification for fear, in some cases, I will say this: We have a classified tax. In the 100% class, besides banks, we place farm lands; lots in cities; business structures in cities, and all public utilities. In the 50% class is put nearly all other kinds of property, leased residences, and residences occupied by the owner, with the added fact that residences occupied by the owner are subject to a $500 reduction before being reduced to the 50% class.

Now, these facts come into the question: Farm lands were assessed at 100%, although that 100% was not arrived at as fully as in the case of national bank stock, but farm lands of course take a low rate of taxation. Only a portion of the city real estate, as I have indicated, was assessed at 100% valuation, and in addition to that we taxed the state banks with a capital stock tax of fifty cents

per $1000 — excise tax — and in addition to that we subject such banks, along with other corporations, to a general income tax, without any exemptions, so the state banks were taxed more than any other class of property, and I might say that I believe that the banks of North Dakota and their attorneys are not actuated by any motive to escape a fair share of the burden of taxation.

Chairman Haig: The time has come when I must ask the pleasure of the conference as to further continuance, but before I do that Mr. Law has a statement to make.

Mr. Law: I just want to say this: Professor Bullock asked me if I would approve of a suggestion to limit the tax on banks further by bringing in real estate. I would, but I should want to make this proviso, that I think the offer should come from the banks, and for this reason: we have already made that offer to the banks; we made it down in Washington, and they refused it. They refused it on this ground: In no state are the banks taxed more than real estate; in many of the states they are taxed less than real estate. They anticipated that a maximum of that kind would be used as a minimum, and it would result in increasing the rate on banks in states where they are now taxed less than real estate.

In that connection, I believe that the real estate limitation would be unfortunate for the banks. I believe they would be better with the limitation that is in the Kellogg bill. However, if they are afraid to agree to the bill without the limitation of real estate added, I should be for it, but I should not be in favor of a committee of this association coming forward with that proposition, because I think it would simply result in further delay.

Professor Bullock: May I speak once more? I don't care anything about the real estate matter. I did it in part with a view to ascertaining how far the gentleman representing the Minnesota bankers was prepared to go. I have no objection to it whatever, but I want to make this remark about the practical situation. This is not a matter of state but of congressional legislation, therefore it seems to me that if this real estate thing won't do any harm and will help, we ought to favor it, whether we prefer to have it there or not.

The gentleman from Iowa said he would not have any particular objection to it but was not in favor of it. Now, we want to minimize our differences; we want to sink our own personal preferences at points that are not essential and we want to stick to essential things. If that real estate thing will help and if there is no objection to it, it seems to me that we all ought to go in for it. I was unable last winter to attend the hearings at Washington. One of them that I planned on attending occurred on the very day that

I was sailing for Europe, and I heard nothing about the hearings until after I returned, when I got a very interesting account of the hearings from a member of this association who was down there, though not taking an active part, a man who is experienced in business and legislative matters and took the whole performance in and judged of it, it seems to me, very shrewdly. The members representing the states went down there without any marked inclination to sink their individual preferences and to stick to essentials; they magnified their differences and one ate up the other's argument, with the result that the effect on the committee was very unfortunate. Some of them argued that the supreme court was wrong, like the water that went over the dam, and got nowhere. Others said that there was no particular trouble in their states, because they stick to the general property tax, but that the amendment *might* be a good thing, and it was immediately pinned onto them that their states hadn't any trouble, and so on, and so forth. So I want to make the suggestion that we sink our differences. I don't care about the real estate thing, one way or the other, unless it will help to get something from Congress that will be practically useful.

CHAIRMAN HAIG: What is the pleasure of the conference? I understood that it was impossible to hold a meeting of the tax association together for more than two hours, but we have done it for nearly four.

SECRETARY HOLCOMB: I would suggest about extension of remarks in the record, that it should be left to the executive committee of the association. We shall have to limit this somewhat, or we shall have a volume that cannot be taken care of.

E. F. COLLADAY: I shall not take more than three minutes—because I shall have something further to say to the committee on resolutions, and I only rise at this time because the gentleman sitting over there immediately after the beginning of the proceedings today, and after Senator Law's report was read, suggested that the gentleman from the District of Columbia ought to be heard from. Now, Senator Law referred to certain decisions in the District of Columbia, with which I am somewhat familiar, but I will thrash that out in the committee on resolutions. The matter has been pretty well covered, but, by reason of being in Washington during all the time that these hearings have been had and during the time this legislation has been under consideration, I have had some knowledge of the course of events there, and I wish to suggest that any proposal of this convention—if the convention is to be considered as presenting any more than merely the demands or decisions of the tax commissioners as a body—should have some flexibility, more flexibility than it will have if a resolution is

adopted merely requesting the passage of the Kellogg bill. The matter has gone beyond that stage; there have been hearings on top of hearings.

Now, I have great respect for President Lord, but when he said in his address last night that the bill brought out by the House of Representatives was passed without opposition, I take it the impression would be gathered therefrom that it was a mere perfunctory matter, but he gave the wrong impression, unintentionally of course. The proceedings of that day in the House of Representatives were almost wholly devoted to this business. Prior to that there had been weeks of hearings by the house committee on banking and currency, which is made up of able legislators from all over the United States, at which Mr. Law and other men of this organization and men representing the bankers were fully heard. There were only two votes in that committee in favor of the proposition of the tax commissioners, and in the house the vote was 201 to 28 in favor of the bill as passed.

Now, succeeding that, in the senate, the matter has been referred to an unusually able subcommittee of the committee on banking and currency, namely: Shortridge, Pepper and Glass. They know their business; they know the questions that are involved here, and they are studying that with the utmost care. They have gone beyond the stage of any particular bill, and have reached the stage where they are hunting for a solution of the problem, just as you gentlemen here have been hunting for a solution in the last hour and a half, at least, of this discussion; going from point to point and thrashing it out and endeavoring to see what the effect will be.

Now, my suggestion as a member of the national tax association—a new member, it is true; I joined last year and attended at Bretton Woods—my suggestion is that you give some flexibility to your action here; that you send a committee which will have power to deal with the suggestions which probably will come out of the meeting of the American Bankers' Association the first week in October, and the suggestions that will come out of the serious study of all these phases of the matter which have been developed and discussed here this afternoon pro and con, by each of the three senators who will have to write this report.

I might say that I think Mr. Tobin is correct. If the national tax association and the conferences which it conducts annually are to have the greatest effect—the highest standing before the people of this country—it will be much better to adhere to the enunciation of broad principles, rather than to advance into the attitude of advocating a specific proposition. I thank you.

Captain W. P. White: Motion to adjourn.

(Adjournment)

TENTH SESSION

Thursday Evening, September 21, 1922

Chairman Lord: The conference will be in order.

The most important industry in this country, and I apprehend in every country on the face of the earth, is the farming industry. Most of the world lives off the farmer in the final analysis. We are fortunate in having with us at this gathering a gentleman who for several years has been connected with one of the largest and most influential farming organizations in this country, if not in the world, and a man who has made an exhaustive study of taxation, who has decided convictions upon the question, and who represents upon economic questions the aspirations and the feelings of the farmers of that great organization, and I am going to call on that gentleman to preside at this meeting this evening. Mr. H. C. McKenzie, of New York.

Chairman McKenzie: Mr. President and gentlemen of the convention: It isn't an easy job for the farmers to make speeches, so that I am not going to make much of a speech in taking the chair tonight. I do want to say, however, that personally I very much appreciate the privilege I have had last year and this, of sitting as a member of this conference. I think that our farmers' organizations are thoroughly convinced of the usefulness and the service which this organization is rendering to the people of the United States, and in explanation of the farmers' position on questions of taxation, I want to say, or repeat what our president has said on a great many occasions, and it is this, that the farmers as a rule are not asking for themselves any special privileges, but only that the people in the country should receive a square deal.

The farmers are willing as a rule to pay their fair share of the cost of supporting our government, and what we ask is that the burden which we all have to bear and which is a tremendous burden, shall be equitably distributed among the people of the United States.

The first item on the program this evening is inheritance taxation. The presentation and discussion of the report of the committee on inheritance taxation will be by Mr. William B. Belknap, of the University of Louisville, chairman.

William B. Belknap: I am glad to see a little larger audience than we had last year for our report. You remember they put it last on the program and they did not embarrass us very much, be-

cause there weren't very many people to worry about when we talked to them.

There has been a little hope and joy instilled into the inheritance tax situation in this country during the year. There has also been a good deal of the reverse experience. Mr. Matthews' flat rate plan has been working in New Hampshire, and Virginia has followed suit and passed an identical statute. There is one other bright spot; California has reduced her inheritance tax. She stood pretty close to the top of the list a while back, but she no longer holds that proud position.

Your committee has been at work for three years; some of the time we worked fairly hard and most of the time not very hard, but we have considered very many different angles of this question. We found out by last year that something had to be done. Whether we are going to be able to do it or not is a question, but we did come to the conclusion that we should have to get the federal estate tax repealed. We are going to try to confine the state taxes to the state of domicile, if possible, and if not, to urge the Matthews' flat rate plan for the transfer tax on non-resident personalty. During the year there have been decisions of the courts, which I am going to read to you, which perhaps open a way for getting rid of one or another of the species of multiple taxation which have added tax on tax until, as you remember, under the present conditions, you are liable to run up a one hundred and thirty per cent tax on an estate. The tax is liable to vary, on even a moderate sized estate going to fairly close relatives, all the way from 4% or 6% to 60%, according to where the decedent happened to live, and according to how the estate was invested. Those conditions, of course, can only lead to trouble in the end.

After a good deal of study, there seems to be perhaps five different ways of arranging inheritance, or death taxes, so that we may get away from this multiple taxation; five possibilities; I don't mean that they are probabilities. The first and oldest of the plans is that of Professor Adams, which he proposed to this association a number of years ago, namely; to let the federal government take over the collection of all death taxes and apportion out to the states, on some sort of a basis — domicile or transfer or situs of property, or a combination of them — a part of the tax thus collected. That you have heard pretty thoroughly discussed by Professor Adams, and if you have not done so, you may read it in the proceedings. Two years ago there was a paper by Professor Gerstenberg at Salt Lake City on that same idea. There is also the idea of the Wisconsin people, which, carried to its logical conclusion as they have not carried it, would limit inheritance taxes to one tax. In a paper that follows mine, Mr. Harrington is going to set forth that idea, in all its purity and beauty, and shorn of the

evil associations which it has sometimes had. If I own stock in a railroad that runs through Nevada and I die, my estate pays to Nevada a tax on that proportion of the stock that represents that railroad's property in Nevada. That is what I have called the Wisconsin idea, only Mr. Harrington proposes not to have any tax at the place of domicile on extra-state personalty of that kind. The tax will all be referable to actual property. That is what I may term for this evening the Harrington idea. He is perhaps the best exponent of it in the country.

Then there is a plan which I ran into this summer in England. The British Empire has had somewhat the same problem that we have had; that is, they have Canada, Australia, New Zealand, South Africa &c., and a great number of people owning securities and property in those places live in England. The English death taxes are high. As you know, they run to practically fifty per cent, on estates of two million pounds or over — $10,000,000. It is not a progressive rate as we usually levy it; so that their death taxes are heavy; if they levied their taxes as we levy ours and piled them up, 130% would look small. The result is that the English have worked out the scheme of taxing death transfers only at the point where the transfer takes place. We do that with real estate here. If I own real estate in Wisconsin and live in Illinois, there is no tax in Illinois on it when I die, but there is tax in Wisconsin. The English have followed that idea through to its logical conclusion. That is, impose the tax in the place where the transfer of property legally takes place. That is a possible solution for us, but not a probable one. It is almost inconceivable that the legislators in our various states would ever agree to giving up the tax on the basis of domicile, on property of people living in the state. They want that tax and they are so used to thinking of it as belonging in the state that it is very difficult to think of them as saying, for instance, that they won't tax United States Steel stock, because New Jersey is the place where that stock is transferred. Of course, New Jersey would like that; so would a number of other corporation states, as you might call them—states where a lot of corporations are incorporated; but, as a general rule, you could not get that across with the legislatures.

For a number of years the fourth plan, which I may call the domicile plan, was fought for by this association; that is, to get a tax levied only at the place of domicile, except, of course, in the case of real estate, but as to that, really following the underlying idea of the English plan. That is, property is really transferred under the laws of the state of domicile, as I understand it—I am not a lawyer—but that is the general theory I have about it. Real estate is transferred in the state where it is located.

You remember that this association fought hard for that par-

ticular reform, and they made a good start with it. Massachusetts, New York, and a number of the states adopted it, but we could not get enough of them to adopt it, and as the Western states started in by levying the tax on all the other bases, the Eastern states gradually drifted back to the same proposition.

That leaves us with the fifth plan, which is the plan we suggested last year. That is, abolition of the federal estate tax; keeping of the domicile tax, as at present, and the Matthews' flat-rate plan on securities of non-residents.

I suppose most of you are familiar with the Matthews' flat-rate plan. It simply means that instead of taking the whole of an estate into each state and figuring out the relationships and the shares of each person under the will and apportioning the whole thing, just as though you were probating the entire will in each state, you simply consider the property to be transferred — stock in some cotton factory in New Hampshire, for instance — and levy a 2% tax on it, without any deductions, without any exemptions, or anything else; the people pay that one tax and go on home and don't have the tremendous labor of finding out what the tax is; and you end up with just about the same tax in the long run.

The Matthews' flat-rate plan, with the tax at domicile, is what we have been backing, and we are hoping that you will help us fight for it. It has the great advantage that we don't have to put it through in every state of the Union in order to profit by it. That is, every state that adopts this flat-rate tax means just one more state in which you won't have to write a dozen letters to get the tax settled—to find out what it is—for non-resident estates. Practically all the other plans have to be carried out *in toto* or they are of no real service.

As to Professor Adams' plan of the federal government taking over all the collection of the tax, all I will say is, that most of you men here know that the state legislatures are going to be very slow to agree to anything of that kind, even though the states have money returned to them on some particular basis. Furthermore, any of you who have had experience with the collection of the federal estate tax know that there is great delay. I don't know what it is right now; a few months ago it took from three to five years to get an estate settled. That delay occurs even though they are dealing with only a few of the larger estates, because the limitation of $50,000 relieves them of small estates. Furthermore, they are helped tremendously by the work done by the state taxing bodies. I hesitate to think what would happen if the weight of taxation of all estates in the United States were thrown upon the central taxing authorities at Washington. I am not saying this in any spirit of criticism of them, but simply because I believe the job is too big for human solution, short of twenty-five or thirty years' experience.

Now, to get down to Mr. Harrington's plan, I think from the point of view of pure logic, Mr. Harrington has the best of all the plans. That is, if you can get a location for property and tax it in that one place and that is all you can tax, there is not going to be squabbling between states, or any question of duplicate or triplicate or quadruplicate or quintuplicate taxation. That is a very attractive proposition. I remember the first time Mr. Harrington and I talked over these things in his office in Wisconsin; he pointed out to me how thoroughly logical it was, in which I agreed with him, and finally I said, "You say that the Wisconsin idea is the only logical idea, and that you would only tax an estate once, but I notice that your law also calls for you to tax every one who dies a resident of Wisconsin on all of his personal property in other states." Mr. Harrington agreed that the law read that way and said he wished it did not. He tells me he proposes to put it up to the legislature of Wisconsin to change that. If the legislature of Wisconsin changes it, I shall be surprised. If all the legislatures of this country changed their laws likewise, I should call it a miracle; that is the political objection to Mr. Harrington's plan. Historically, death duties in this country arose as taxes on the estates of people dying residents of the state only, and the other taxes have come later, so that we have a long historical development, and the general ingrained theory throughout the country that the real inheritance tax should be at the place of domicile. I believe it is going to be practically impossible, certainly in the Eastern states, and in all probability in the Western states, to get even a very small proportion of the states to change their bases; and unless all of the states change their bases, or a very large part of them, there would be little chance to get away from the duplication and complication we have at the present time.

Now, as to administration, I am only going to point out one or two things about the difficulty in the administration of such a tax. Take American Telephone & Telegraph Company stock; a big corporation, the stock of which is held all over the country, with property in every state of the Union; and furthermore, owning shares of stock in other companies, which have property in several states: Now, under a plan where you are going to tax only where the property is, and divide up the stock according to the property it represents, what are you going to do with a share? A widow dies, leaving one share of American Telephone & Telegraph Company's stock to her son, worth $120 or something like that. It would cost you at least $500 if you are going to have to get waivers from forty-eight states to get that stock transferred. Mr. Harrington always comes back at me by saying there are only a few of those companies. There is the Postal Telegraph Company, Western Union, Woolworth, the Winchester Company, and the tire and

rubber companies, automobile companies, like General Motors, and Ford—I just give you a few of them—railroads and gasoline companies—well, you can think of them yourself. I disagree with Mr. Harrington very decidedly on the number of those and on the amount of securities outstanding, and on the real problem of administration involved.

On the legal end of it, I have been fortunate enough to secure some notes made by Mr. Handy of the Prentice-Hall people, which will be printed with these notes, and then he goes on to say:

(Reading Mr. Handy's notes)

So much for the various plans. I think that I have covered what the committee has found out about the various plans. There are one or two remarks I want to make. Professor Adams, in talking with me this afternoon, said that he felt that it would be a great pity to admit that duplicate taxation of inheritances was legitimate, and in favoring the Matthews' flat-rate plan we were doing that. It may be too bad to admit it—I would rather see single taxation of inherited estates than duplicate — but duplicate taxation would look mighty good to one who had suffered quintuple or even worse taxation, and he would think duplicate taxation was pretty easy. As it runs now, there are almost always three taxes; and we have had all sorts of fool things. I think of one case in the last year where two states collected on the domicile principle. That is a thing this committee has not solved. I have looked in vain to find a solution.

Now, the paper of Mr. Harrington is a good one; he is an astute lawyer; he is also a real orator; he is a learned tax official; he is a gentleman, and he is a good sport. After telling us what he thought about our plan and saying that he preferred his plan, which, as I told you, is one for which I have every respect, he said that he would stand with the committee in their report, and help us to fight for what seems to be the only reform immediately possible.

I don't know that there is any use in saying very much more. All of you are familiar with the tax situation. If it were a popular audience, I could go on and tell how bad the inheritance tax situation is; but you all know it. There is nobody in this audience who does not realize how mixed up and thoroughly evil our present tax situation is; so I am simply going to say that the committee submits to you as a plan of battle, first and foremost; to turn all of our guns on the abolition of the federal estates tax; that is a thing which, if it is going to be done at all, must be done at once. The federal government is getting its tentacles more and more firmly fixed on its position all the time. If we are going to abolish the federal estates tax, it must be done in the next couple of years, or we shall never abolish it. If we do abolish it, it will leave the

states enough additional revenue to draw on so they won't have to be scrapping with each other about every different kind of a tax. Secondly; we believe that we ought to try, as far as possible, to get the tax on estates, other than real estate, limited to the state of domicile; third, where that is not possible, to get the Matthews' flat-rate plan in, so as to cut down the cost of administering estates; fourth, we ought to get as far as possible uniformity of both substance and procedure of the law in various states. Of course, you cannot get absolute uniformity of procedure or anything even approaching absolute uniformity in a country where you have forty-eight states with different probate courts and different governmental organizations.

We have drawn up a model inheritance tax law, and when we say "model", we don't mean a perfect inheritance tax law. This model inheritance tax law has been distributed. I don't know whether all of you have it or not; there are a number of copies here.

This law will take a good deal of study; you won't find it particularly exciting. I don't think it will keep you awake tonight if you start reading it, for I have slept over it a good deal myself. It is something you can take home, and there will be plenty of them here tomorrow if you want to send souvenirs to your friends. We submit this and have already submitted some resolutions.

There is very little left to say, then, except to call attention to one or two points. First; this law confines itself to a tax on all real estate and on the personalty of resident decedents. Second; it taxes joint interests only at the rate on the proportional part of the joint interest. Third; it exempts all religious and charitable institutions within a state, and taxes those outside of the state in class B, that is, at a fairly moderate rate instead of at the higher rates. That, for instance, in the Frick case, worked a great hardship on a number of institutions that had to pay duplicate and triplicate taxation on very large sums of money left to them, because they were in the lowest class with the highest rate. It is perfectly easy under present conditions for the tax to take 50%, 60%, or 70% of a bequest to a religious or an educational institution.

Really, the work of this committee has centered around its model inheritance tax law. It does not look so exciting, as I say. What I hope we can fight for is some sort of an approximation to the general ideas of fairness in this law. One thing we put in is that the tax shall not be levied again within three years on people in class A. If a man dies and leaves a fortune to his wife, and she dies anywhere from one-half hour to three years after him, and the property is passed on to his children, they shall not again have to pay the inheritance tax on it. That seems a fair provision. You, of course, will want time to read it over, if you read it at all, and

I hope some of you will find it of sufficient interest to do so. As I say, it has been of sufficient interest for a good deal of hard work on it. I have greatly enjoyed the work of this committee, and I certainly have enjoyed my association with the men who have worked so faithfully on the committee. Thank you.

(The model inheritance tax act referred to is as follows.—Ed.)

MODEL INHERITANCE TAX LAW

PRESENTED BY A COMMITTEE OF THE NATIONAL TAX ASSOCIATION

SECTION 1

TRANSFERS TO BE TAXED

Tax on Transfer of Property—1. A tax shall be and is hereby imposed upon any transfer by a resident of this state of any real property within the state, or any tangible or intangible personal property, or interest therein, and by a non-resident of this state of any real estate located within this state, or any interest therein to any person or persons, in trust or otherwise, in the following cases:

Under Will or Statute—2. When the transfer is under a will or by the statute of descent and distribution of this state.

In Contemplation of Death—3. When the transfer is of personal property made by a resident, or of real estate located within the state made by any person whether a resident or non-resident, by deed, grant, bargain, sale, or gift, made in contemplation of the death of the grantor, vendor, or donor, or intended to take effect in possession or enjoyment at or after such death. Every transfer made within three years prior to the death of the grantor, vendor or donor, of a material part of his estate, or in the nature of a final disposition or distribution thereof, and without an adequate valuable consideration, shall be construed to have been made in contemplation of death within the meaning of this section.

By Power of Appointment—4. Whenever any person shall exercise a power of appointment derived from any disposition of property made, whether before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and has been bequeathed or devised by such donee by will; and whenever any person possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the person thereby becoming entitled to the possession or enjoyment of the property to which such power related had

succeeded thereto by will of donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

Joint Interests — 5. Whenever any property, real or personal, is held in the joint names of two or more persons, or as tenants by the entirety, or is deposited in banks or other institutions or depositaries in the joint names of two or more persons and payable to either or the survivor, upon the death of one of such persons the right of the surviving tenant by the entirety, joint tenant or joint tenants, person or persons, to the immediate ownership or possession and enjoyment of such property shall be deemed a transfer of one-half or other proper fraction thereof taxable under the provisions of this chapter in the same manner as though this part of the property to which such transfer relates belonged to the tenants by the entirety, joint tenants or joint depositors as tenants in common, and had been bequeathed or devised to the surviving tenant by the entirety, joint tenant or joint tenants, person or persons, by such deceased tenants by the entirety, joint tenant or joint depositor, by will.

Contracts in Contemplation of Death—6. The amount due upon the claim of any creditor against the estate of a deceased person arising upon a contract made after the passage of this Act, if payable by the terms of such contract at or after the death of the deceased, shall be subject to the same tax imposed by this Act upon a legacy of like amount. The value of legacies or distributive shares in the estates of deceased persons for the purpose of the legacy or succession tax shall not be diminished by reason of any claim against the estate based upon such contract in favor of the person entitled to such legacies or distributive shares, except insofar as it may be shown affirmatively by competent evidence that such claim was legally due and payable in the lifetime of the decedent. Payment of the amount so certified shall be a discharge of the tax.

Section 2

RATE OF TAXATION

Exemptions of Charitable, Educational and Religious Institutions — 1. All transfers to educational, religious, or other institutions, societies, or associations, whose sole object and purpose is to carry on charitable, educational or religious work, within the state, all transfers for or upon trust for any charitable purpose in this state and all transfers to cities or towns or public institutions in this state for public purposes, shall be exempt from the tax imposed by the preceding section. But no such corporation or association shall be entitled to such exemption if any officer, member, shareholder or employee thereof shall receive or may be lawfully entitled to receive any pecuniary profit from the operations thereof, except reasonable compensation for services in effecting one or

more of such purposes or as proper beneficiaries of its strictly charitable purpose; or if the organization thereof, for any such avowed purpose, be a guise or pretense for directly or indirectly making any other pecuniary profit for such corporation or association, or for any of its members or employees, or if it be not in good faith organized or conducted exclusively for one or more of such purposes.

Classification of Beneficiaries' Rates—2. The tax upon transfers of property as above defined shall be at the following rates.

Class A. In case the transfer shall be to or for the benefit of a husband, wife, lineal ancestor, lineal descendant, adopted child or the lineal descendant of an adopted child of the deceased, stepchild, daughter-in-law, son-in-law, the tax shall be: On its value not exceeding twenty-five thousand ($25,000) dollars, at X per cent; on the excess of its value over twenty-five thousand ($25,000) dollars and not exceeding fifty thousand ($50,000) dollars, 2X per cent; on the excess of its value over fifty thousand ($50,000) dollars and not exceeding one hundred thousand ($100,000) dollars, at 3X per cent; on the excess of its value over one hundred thousand ($100,000) dollars and not exceeding five hundred thousand ($500,000) dollars, at 4X per cent, and on the excess of its value over five hundred thousand ($500,000) dollars, at 5X per cent.

Class B. In case the transfer shall be to, or for the benefit of, a brother, sister, brother-in-law, sister-in-law, nephew, niece or lineal descendant, the wife or widow of a nephew, or the husband of a niece, and all religious, charitable, educational and state institutions as defined in Sec. 2, par. 1, within the United States but not within this state, the tax shall be:

On its value not exceeding twenty-five thousand ($25,000) dollars, at 2X per cent; on the excess of its value over twenty-five thousand ($25,000) dollars and not exceeding fifty thousand ($50,000) dollars at 3X per cent; on the excess of its value over fifty thousand ($50,000) dollars and not exceeding one hundred thousand ($100,000) dollars, at 4X per cent; on the excess of its value over one hundred thousand ($100,000) dollars and not exceeding five hundred thousand ($500,000) dollars at 5X per cent, and on the excess of its value over five hundred thousand ($500,000) dollars, at 6X per cent.

Class C. In case the transfer shall be to or for the benefit of any person or corporation not exempted by Sec. 2, par. 1, or included in either of the foregoing classes, the tax shall be:

On its value not exceeding ten thousand ($10,000) dollars at 5X per cent; on the excess of its value over ten thousand ($10,000) dollars and not exceeding twenty-five thousand ($25,000) dollars at 6X per cent; on the excess of its value over twenty-five thousand ($25,000) dollars and not exceeding fifty thousand ($50,000)

dollars at 7X per cent; on the excess of its value over fifty thousand ($50,000) dollars and not exceeding one hundred thousand ($100,000) dollars at 8X per cent; on the excess of its value over one hundred thousand ($100,000) dollars and not exceeding five hundred thousand ($500,000) dollars at 9X per cent, and on the excess of its value over five hundred thousand ($500,000) dollars at 10X per cent.

Note — The symbol "X" has been used as the rates of the tax will, of necessity, vary in various states. Even the proportionate rates will vary but the progression given here may be of some assistance in arranging such progression.

Calculations—3. But no property or interest therein, which shall be transferred to husband, wife, or to any other person under twenty-one years of age who is taxable under the provisions of Class A, shall be subject to such tax except upon its value in excess of ten thousand ($10,000) dollars and no transfer of property or interest therein to other persons or corporations shall be subject to such tax, except upon its value in excess of five hundred ($500.00) dollars. Such exemptions are, in each case, to be taken out of the first ten thousand ($10,000) dollars of the value of the property or interest transferred.

Liability of Executors — 4. Administrators, executors, and trustees and all beneficiaries of such taxable transfers shall be liable for such taxes, with interest, as hereinafter provided, until the same have been paid. Provided, however, that in no case shall such administrator, executor or trustee be liable for a greater sum than actually passes through his administration.

Deductions — In calculating the value of the distributive share the following deductions and no others shall be allowed:

a. Debts of the decedent.

b. Taxes accrued and unpaid.

c. Death duties paid to foreign countries.

d. Estate and inheritance taxes paid to other states.

e. Federal estate taxes — in the proportion which the property assessed in this state bears to the total taxable property of the estate. All assessment used in calculation to be those agreed to by the tax commission of this state.

f. Drainage, street or other special assessments which are a lien on said property.

g. Funeral and burial expenses; and all amounts actually expended not exceeding the sum of $500 for monuments.

h. Commissions of executors and administrators actually allowed and paid.

i. Costs of administration including reasonable attorneys' fees.

j. (Second transfer of property which has paid the transfer tax within three years.)

A deduction shall be allowed to persons of class "A" of Sec. 2. for all property transferred by a decedent of class "A" of Sec. 2 to any person of that class, provided the same property was transferred within three years to such decedent and a tax paid thereon in this state. This deduction shall not exceed the appraised value on which such tax was paid; providing, however, such property previously taxed can be identified as having been received by the decedent from such prior decedent by gift, bequest, devise or inheritance, or which can be identified as having been acquired in exchange for property so received.

Special Case — Contingent Estates — 6. Estates in expectancy which are contingent or defeasible and in which the proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited.

Divesting—7. Where an estate or interest can be divested by the act or omission of the legatee or devisee it shall be taxed as if there were no possibility of divesting.

Contingent Estates—8. The value of every future, or contingent or limited estate, income or interest, shall for the purpose of this act be determined by the rule, methods and standards of mortality and of value that are set forth in the Actuaries Combined Experience tables of mortality for ascertaining the value of policies of life insurance and annuities and for the determination of the liabilities of life insurance companies, save that the rate of interest to be assessed in computing the present value of all future interest and contingencies shall be five (5) per cent per annum.

Valuation of Life Interests and Contingent Estates — 9. The insurance commissioner shall without a fee on the application of any superior court or of any inheritance tax appraiser determine the value of any future or contingent estate, income or interest therein, limited, contingent, dependent or determinable upon the life or lives of persons in being upon the facts contained in any such appraiser's application or other facts to him submitted by such appraiser or said court and certify the same in duplicate to such court or appraiser, and his certificate thereof shall be competent evidence that the method of computation therein is correct. When an annuity or a life estate is terminated by the death of the annuitant or life tenant, and the tax upon such interest has not been fixed and determined, the value of said interest for the purpose of taxation under this act shall be that amount of the annuity or income actually paid or payable to the annuitant or life tenant during the

period for which such annuitant or life tenant was entitled to the annuity or was in possession of the life estate.

Section 3

PROCEDURE

Supervision of State Tax Commission—1. The State Tax Commission shall have complete supervision of the enforcement and collection of all provisions of the Inheritance Tax Act, and shall make rules and regulations for the just administration thereof. It may employ such attorneys, examiners or special agents as may be necessary for the reasonable carrying out of its full intent and purpose. Such attorneys, examiners or special agents shall visit the several counties of the state and see that all statements required by this act are filed with the clerks of the proper court by administrators and executors, or by beneficiaries under wills where no executor is appointed; examine into all statements filed by such administrators and executors; require such administrators and executors to furnish any additional information that may be deemed necessary to determine the amount of tax that should be paid by such estate. If not satisfied, after investigation, with valuations returned by the administrator or executor, the attorney, examiner or special agent shall make an additional appraisal, or may recommend the appointment by the Commission of a special appraiser, who in such cases shall be paid five dollars per day and expenses for his services. The administrator or executor, if not satisfied with such additional appraisal, may appeal within thirty days to the State Tax Commission, which appeal shall be heard and determined as other cases. From this decision or any other decision made after an appeal to the State Tax Commission the administrator or executor or any interested person shall have the right to appeal to any court of probate jurisdiction of the county in which said estate is situated for the purpose of having said issue tried, provided that the tax shall first be paid, and if it shall be determined upon trial that said tax or any part thereof was illegal or excessive, the amount of tax so adjudged overpaid or declared invalid shall, with 6 per cent interest, be refunded by the state treasurer.

Probate Court Reports and Duties—2. The Probate Court shall, within 30 days after it is filed, send to the Tax Commission, by mail, one copy of every statement filed by executors and administrators, a copy of every will admitted to probate, and a copy of the inventory and appraisal of every estate, and shall in like manner send a copy of every account of an executor or administrator, but the Tax Commission shall have power to make rules or orders dispensing with these requirements in case it is manifest that no tax will be payable under the terms of this Act. The Probate Court

shall also furnish copies of papers and such information as to the records and files in his office as the Tax Commission may require. The fees for copies furnished under the provisions of this section shall be ten cents per hundred words, and shall be charged against the estate as other fees allowed the Probate Court.

Duty of Executor, Administrator, or Trustee to Report Real Estate Transfers—3. If real estate of a decedent so passes to another person as to become subject to said tax, his executor, administrator or trustee shall inform the Tax Commission thereof within six months after his appointment, or if the fact is not known to him within that time, then within one month after the fact becomes known to him.

Tax Commission Assessment—4. All taxes imposed by this act shall be assessed by the State tax commission upon the full and fair cash value of the property transferred at the rates hereinbefore set out, to be paid to the state treasurer, for the use of the state. All executors, administrators, or trustees shall be personally liable for any and all such taxes until the same are paid. Notice of the amount of said taxes shall be mailed to the executor, administrator, or trustee or other person liable therefor, by said board, and, upon request, to any other person by whom said taxes are payable. But failure to receive said notice shall not excuse the non-payment of or invalidate said taxes. Said taxes shall be and remain a lien upon the property transferred, and upon all property acquired by the executor, administrator, or trustee in substitution therefor while the same remains in his hands, until the said taxes are paid or a bond given as herein provided, but said lien shall not affect any tangible or intangible personal property after it has passed to a *bona fide* purchaser for value; provided, however, that nothing herein contained shall give the owner of any securities the right to have the same transferred to him by the corporation, association, company or trust issuing the same, until a permit required by this act shall have been filed as herein provided. The lien charged as aforesaid upon any real estate or separate parcel thereof may be discharged by the payment of all taxes due and to become due upon said real estate or separate parcel, or by the filing and acceptance of a bond as provided in this Act, or by an order of the State Tax Commission transferring such lien to other real estate owned by the person to whom said real estate or separate parcel thereof passes. The heir, devisee or other donee shall be personally liable for the tax on such real estate, as well as the executor, administrator, or trustee; and if the executor, administrator, or trustee pays such tax, he shall, unless the same is made an expense of administration by the will or other instrument, have the right to recover such tax or any other tax from the heir, devisee or other donee of such real estate.

Records Kept by Tax Commission—Secrecy of Records—5. The Tax Commission of this State shall keep a record of all returns made by appraisers, the cash value of annuities, life estates and term of years, and the amount of all taxes assessed by them; and, in addition, the said Commission may enter in said books all other information and data which they may deem desirable or proper. All returns made by appraisers and all data otherwise gathered by the Tax Commission shall be considered as privileged communications and the same shall not be exhibited for inspection to any person or persons other than the executor or the administrator or a beneficiary entitled under the terms of the last will and testament or the intestate laws to share in the estate, or the duly authorized attorney of said executor, administrator or beneficiary. Nothing in this section shall be construed as prohibiting the use of such returns made by appraisers and all data otherwise gathered by the Commission in legal proceedings involving the assessment, collection or abatement of taxes provided for by the various inheritance tax statutes prevailing in this State.

Section 4

Appraisement, etc.

Appraisers, Appointment, Compensation—1. The State Tax Commission shall appoint, and may at its pleasure remove, one or more persons in each county of the state to act as inheritance tax appraisers therein. Every such inheritance tax appraiser shall be paid for his services out of any inheritance tax moneys in the hands of the treasurer of the county in which he may be acting, a reasonable compensation, to be fixed by the superior court of said county, or a judge thereof, and, said appraiser shall be allowed his actual traveling and other necessary expenses, and the fees paid such witnesses as he shall subpœna before him, said expenses and fees to be allowed by said superior court or a judge thereof. Any such appraiser who shall take any fee or reward, other than such as may be allowed him by law, from any person, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than Two Hundred Fifty ($250.00) dollars or more than Five Hundred ($500.00) dollars, or be imprisoned in the county jail ninety days or both, and shall be dismissed from service.

Actions for Quieting Title—2. Actions may be brought against the state by any interested person for the purpose of quieting the title to any property against the lien or claim of lien of any tax or taxes under this act, or for the purpose of having it determined that any property is not subject to any lien for taxes nor chargeable with any tax under this Act. No such action shall be maintained where any proceedings are pending in any court in this state wherein the taxability of such transfer and the liability therefor

and the amount thereof may be determined. All parties interested in said transfer and in the taxability thereof shall be made parties thereto and any interested person who refuses to join as plaintiff therein may be made a defendant. Summons for the state in said action shall be served upon the state tax commission. Actions under this section shall be commenced in the superior court of the county in which is situated any part of any real property against which any lien is sought to be enforced, or to which title is sought to be quieted against any lien, or claim of lien; but if in said action no lien against real property is sought to be enforced, the action shall be brought in the superior court of the county which has or which had jurisdiction of the administration of the estate of the decedent mentioned herein.

Section 5

PAYMENT

Forms—1. The State Tax Commission shall prepare and furnish, upon application, blank forms covering such information as may be necessary to determine the amount of inheritance tax due the State on the transfer of all property subject to tax; it shall determine the value of such property and have full authority to do all things necessary to secure full and final settlement of all such inheritance taxes due or to become due, to the State Treasurer.

Discount—2. Discount for payment in six months; interest after twelve months; penalty after two years. All taxes imposed by this act shall be due and payable at the death of the testator, intestate, grantor, donor or vendor, and if the same are paid within six months from the date of the death of the testator, intestate, grantor, donor or vendor, a discount of three per centum shall be allowed and deducted from such taxes; if not paid within one year from date of the death of the testator, intestate, grantor, donor or vendor, such tax shall bear interest at the rate of six per centum per annum, to be computed from the expiration of one year from the date of the death of such testator, intestate, grantor, donor or vendor, for a period of one year, and ten per centum per annum thereafter until the same is paid.

Penalties for Delay—3. The penalty of 10 per cent herein imposed may be remitted to simple interest by the State Tax Commission in case of unavoidable delay in settlement of estate or of pending litigation. And the State Tax Commission is further authorized in case of protracted litigation, or other delay in settlement not attributable to laches of the party liable for the tax, to remit all or any portion of the interest charges accruing under this schedule with respect to so much of the estate as was involved in such litigation or other unavoidable cause of delay; provided, that time for payment and collection of such tax may be extended by the State Tax Commission for good reason shown.

Payment in Installments—4. Where the property consists of real estate or any interest therein or income therefrom, the taxes thereon may, in the discretion of the State Tax Commission, with the consent of the Attorney General and State Treasurer, be paid in four equal annual installments, the first installment being payable within a year of decedent's death and the remaining installments being payable at the expiration of the second, third and fourth years succeeding decedent's death, such installments, after the first, bearing interest at the rate of six per cent per annum, said interest to be paid on each respective installment at the time the same becomes due and payable.

Advance Payment and Refund of Excess — 5. Any estate from whom any such tax is or may be due may make an estimate agreeable to the State Tax Commission of and pay the same to the State Treasurer, who shall receipt therefor, at any time before the same is determined, and shall thereupon be entitled to any discount and be relieved from any interest or penalty and shall have permits issued for the transfer of securities or real estate upon the amount so paid in the same manner as if the tax were then determined. Any excess so paid shall be refunded to the person so paying or entitled thereto by such treasurer out of any inheritance tax money in his possession, upon filing with such treasurer a copy of the order fixing such tax, and attached thereto a certificate stating the amount of refund due.

Tax on Real Estate of Non-Residents—Procedure when no Administration in this State: Ancillary Administration or Petition of State Treasurer—6. In the absence of administration in this state upon the estate of a non-resident, the State Tax Commission may, at the request of an executor or administrator duly appointed and qualified in the state of the decedent's domicile, or of a grantee under a conveyance made during the grantor's lifetime, and upon satisfactory evidence furnished him by such executor, administrator, or grantee, or otherwise, determine whether or not any real estate of said decedent within this state is subject to tax under the provisions of this act, and if so, may determine the amount of such tax and adjust the same with such executor, administrator, or grantee, and for that purpose may appoint an appraiser to appraise said property and the expense of such appraisal shall be a charge upon said real estate in addition to the tax. The treasurer's certificate as to the amount of such tax and his receipt for the amount therein certified may be filed in the probate office in the county where the real estate is located, and when so filed shall be conclusive evidence of the payment of the tax, to the extent of such certification. Whenever in such a case the tax is not adjusted within four months after the death of the decedent, the proper probate court, upon application of the state treasurer, shall appoint an administrator in this state.

Composition of Tax—7. The Tax Commission, by and with the consent of the Attorney General expressed in writing, is hereby empowered and authorized to enter into an agreement with the trustees of any estate in which remainders or expectant estates have been of such a nature, or so disposed and circumstanced, that the taxes therein were held not presently payable, or where the interests of the legatees or devisees were not ascertainable and to compound such taxes upon such terms as may be deemed equitable and expedient; and to grant discharge to said trustees upon the payment of the taxes provided for in such composition.

Section 6

ENFORCEMENT

Duties of Safe Deposit Companies, Trust Companies, Banks, Corporations, etc. — 1. No safe deposit company, trust company, corporation, bank or other institution, person or persons engaged in the business of renting safe deposit boxes or other receptacles of similar character shall rent any such box or receptacle without first requiring all persons given access thereto to agree in writing to notify such safe depositary, bailee, or lessor, from whom such box or receptacle is rented of the death of any person having the right of access thereto, before seeking access to such box or receptacle after the death of such person; and all persons having the right of access to any such safe deposit box or receptacle, upon the death of any other person having access thereto, before seeking access to such box or receptacle must notify such safe depositary, bailee, or lessor, from whom such box or receptacle is rented of the death of such person; and it shall be unlawful for any safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control, custody or partial custody any safe deposit box or similar receptacle, to permit access thereto by any one after the death of any person who at the time of his death had the right or privilege of access thereto either as principal, deputy, agent, or cotenant, without the consent of the State Tax Commission or a person by it authorized to issue such consent. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control or custody or under partial control or partial custody securities, deposits, assets or property belonging to or standing in the name of a decedent who was a resident or non-resident, or belonging to, or standing in the joint names of such a decedent and one or more persons, including the shares of the capital stock of, or other interest in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal repre-

sentatives, agents, deputies, attorneys, trustees, legatees, heirs, successors in the interest of said decedent or to any other person or persons, or to the survivor or survivors when held in the joint names of decedent and one or more persons, or upon their order or request, without retaining a sufficient portion of amount thereof to pay any tax and interest which may thereafter be assessed thereon under this act and unless notice of the time and place of such delivery or transfer be served upon the State Tax Commission at least thirty days prior to said delivery or transfer; provided, that the State Tax Commission or person by them in writing authorized to do so, may consent in writing to said delivery or transfer, and such consent shall relieve said safe deposit company, trust company, corporation, bank or other institution, person or persons from the obligations hereunder to give such notice or to retain any portion of said securities, deposits or other assets in their possession or control. And it shall be lawful for the State Tax Commission or county treasurer, personally or by representatives, to examine same securities, deposits or assets at the time of said delivery or otherwise.

Penalties—2. Failure to comply with the provisions of this section shall render such safe deposit company, trust company, corporation, bank or other institution, person or persons, liable to a penalty of not more than twenty thousand ($20,000) dollars, and in addition thereto said safe deposit company, trust company, corporation, bank or other institution, person or persons shall be liable for the amount of the taxes, interest and penalties due under this Act on said securities, deposits, or other assets above mentioned, and said penalties and liabilities of said safe deposit company, corporation, bank or other institution, person or persons for the violation of this section may be enforced in an action brought by the State Tax Commission in any court of competent jurisdiction.

Tax to be Deducted from Legacies, or Paid by Legatee of Special Property; Executor or Administrator to Collect Taxes on Land; Sale of Property to Pay Tax; Lien on Property to Secure Tax on Conveyances in Decedent's Lifetime—3. An executor, administrator, or trustee holding property subject to said property, shall not deliver property or a specific legacy subject to said tax until he has collected the tax thereon. When a specific bequest of personal property other than money is subject to a tax under the provisions of this act, and the legatee neglects or refuses to pay the tax upon demand, the executor or trustee may upon such notice as the probate court may direct be authorized to sell such property, or, if the same can be divided, such portion thereof as may be necessary, and shall deduct the tax from the proceeds of such sale, and shall account to the legatee for the balance, if any, of such proceeds, in lieu of the property. An executor or administrator

shall collect taxes due upon land which is subject to tax under the provisions hereof from the heirs of devisees entitled thereto, and he may be authorized to sell said land if they refuse or neglect to pay said tax. When a conveyance made by a decedent in his lifetime is subject to said tax, and the property thus conveyed, being personal property, is without the state, or is removed from the state before the tax is paid, such tax shall become a lien upon all the property of the decedent and shall be chargeable as an expense of administration; and the executor or administrator shall collect taxes due on account of such conveyances and may be authorized to sell any property subject to the lien of such tax, for the payment thereof, as in other cases.

Legacy Charged on Realty; Tax, How Paid—4. If a legacy subject to said tax is charged upon or payable out of real estate, the heir or devisee, before paying it, shall deduct said tax therefrom and pay it to the executor, administrator or trustee in the same manner as the payment of the legacy itself could be enforced.

Collection of Tax upon or Sale of Property Passing to Several Beneficiaries—5. When any interest in property less than an estate in fee is devised or bequeathed to one or more beneficiaries with remainder to others, and the interest of one or more beneficiaries is subject to said tax, the executor shall deduct the tax upon such taxable interests from the whole property thus devised or bequeathed and whenever property other than money is so devised or bequeathed he may, unless the taxes upon all the taxable interests are paid when due by the beneficiaries be authorized to sell such property or such portion thereof as may be necessary, as provided in Sections 5 and 8 and having deducted the unpaid taxes on such taxable interests from the proceeds of such sale, he shall account for the balance in lieu of the property sold as in other cases.

Penalty for False Statements or Reports—6. Every person who wilfully and knowingly subscribes or makes any false statement of facts, or knowingly subscribes or exhibits any false paper or false report with intent to deceive any appraiser appointed pursuant to the provisions of this Act, shall be guilty of a misdemeanor and punished accordingly.

Note — The procedure suggested in Sects. 3, 4, 5 and 6 is, of course, only tentative as the organization of the state government and the probate procedure within the state must control in each particular case.

In case it is desired to tax the transfer of the personalty of non-resident decedents the Matthews' Flat Rate Plan, as in force in New Hampshire, is recommended. Copies of this law will be gladly furnished.

The members of the committee present at the conference and in-

strumental in drawing up the above law were Jos. S. Matthews, New Hampshire; John Harrington, Wisconsin; Albert Handy, Prentice Hall Co., New York; Ralph W. Smith of California substituting for Ray L. Riley and William B. Belknap, Kentucky.

There were of course minor points of discussion and slight differences of opinion. Mr. Harrington concurred in the report only after stating his preference for the taxation of inheritances on the basis of the actual location of the property—whether represented by corporation securities or not. Since he realized this was for the present entirely unobtainable he joined with the others in their attempt to reform the present intolerable situation. The program as outlined by the National Tax Association calls for the abolition of the Federal Estates tax and the elimination of multiple taxation by the states with the adoption of the Matthews' Flat Rate Plan wherever duplication is unavoidable.

Besides those mentioned above as present the other members of the committee and several friends have done real work in helping with this law, Senator Law of New York, Professor Freund of the University of Chicago, and Mr. Huse of Massachusetts, in particular.

WILLIAM B. BELKNAP, *Chairman*,
University of Louisville

ALBERT HANDY,
Prentice-Hall Inheritance Tax Service

JOHN HARRINGTON,
Wisconsin Inheritance Tax Attorney

WILLIAM C. HARRISON,
Secretary, State Board of Tax Commissioners of Indiana

W. C. KEIRSTEAD,
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JOSEPH S. MATTHEWS,
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A. J. MAXWELL,
North Carolina Corporation Commission

THOMAS REED POWELL,
Columbia University

RAY L. RILEY,
State Comptroller of California

LESSING ROSENTHAL,
Chicago, Ill.

THOMAS W. SIMS,
Alabama Tax Commission

Secretary Holcomb: May I interrupt the meeting just a moment? The committee on the apportionment of interstate business has done a whole lot of work, and it is only fair to permit them to introduce this short resolution, which some member of the committee has submitted.

(Secretary Holcomb reads resolution in regard to the rule of apportionment of income of mercantile and manufacturing concerns)

Chairman McKenzie: Under the rules of the association, the resolution will be referred to the resolutions committee. Before throwing this topic open for general discussion, I am going to ask Mr. John Harrington, a member of the committee, and a member of the staff of the Wisconsin Tax Commission, to speak to us for a few minutes and present his views.

I should just like to suggest to the speaker and the conference that as you all know we put over until tonight number three of the second session. If we are going to get through in any reasonable time this evening, the speakers will have to be bound strictly by the rules which we have adopted; otherwise you will be here until midnight.

John Harrington of Wisconsin: I think fifteen or twenty minutes will cover what I have to say.

Mr. Chairman and gentlemen of the conference: My name has been connected with this subject in the remarks of the chairman of this committee in such a way that it seems to me I should at least have an opportunity of defending a position which we take in our state. I might say further that we have not found any difficulty in applying the principles that will be found in this paper, in our state, and that the objections which have been offered will, I think, largely disappear when the question comes to real consideration.

You see, here is a system that has gone on for years, and we have become accustomed to it, and because of that custom, we naturally think that there is nothing else. I will take no more time to make introductory remarks and the paper will probably explain itself sufficiently.

THE LOGICAL BASIS FOR INHERITANCE TAXATION

JOHN HARRINGTON

Inheritance Tax Counsel, Wisconsin Tax Commission

It is not intended in this paper to assume the attitude of dissenting from the very capable and complete report of the majority of the committee on inheritance taxation. This paper should be considered rather a supplemental than a dissenting report. If it should be assumed that the more prevalent fundamental theory upon which the present inheritance tax laws of the states are founded is the

sound and correct theory, we can all join in the report as a whole, although we may still differ as to a few less important details.

But because there seem to be certain irreconcilable differences that persist, in spite of every effort to get together; and because these differences seem to extend to tax officials, legislatures, and even the courts, it seems highly desirable at this time, if it can be done, to go back and re-examine these fundamentals and to re-state definitely what appear to be the basic principles which should govern in inheritance taxation, as viewed by the minority.

As sustaining our views of the need of such re-examination, I take the liberty of quoting from the preamble of resolutions adopted at the 1921 conference, as follows:

> "WHEREAS this conference, although opposed to the levy of state inheritance taxes upon property passing at death under the laws of a state other than that in which the decedent was domiciled at time of death, recognizes the fact that such taxes are now imposed and are likely to continue in force for some time to come."

Is not this a rather despairing attitude, and an acknowledgment of weakness? This does not correspond with the facts, for real estate is now assessed for inheritance tax purposes in the state of its situs, and not at domicile, and is universally acknowledged to be properly so assessed; and real estate constitutes more than half of the property transferred at death. Why should it be assumed that double taxation will continue? It is clearly unjust—aggravatingly unjust—that in one estate the transfer should be taxed but once, while in another estate, perhaps no larger, the transfer should be subject to the inheritance tax two, three, or four times. If you will examine the majority report, you will observe that very much of it is devoted to devices intended to minimize the evils of double and treble taxation. This should be unnecessary.

It will probably be agreed to unanimously that the first principle of inheritance taxation should be that the transfer of property at death should be subject to only one transfer or inheritance tax (excluding consideration of the federal estate tax). This principle should be fundamental, and should require no further argument nor elaboration.

Following this, we have another alleged principle, one that is assumed more often than it is expressed, although it is expressed often enough, as in the resolution above quoted. This principle may be stated as follows: The inheritance tax should be imposed upon the transfer of decedent's property at his domicile and where his estate is being administered.

This principle sounds obvious and as a matter of course; and consequently, as a general principle, has been little questioned or

analyzed. It probably grew out of the fact that at an early period, when inheritance taxation was taking form in an experimental way, most decedents had all of their property at their domicile. The location of the property and the domicile coincided, and as a matter of course, the tax was imposed at the domicile; and that was assumed to be the only proper place of taxation; and that assumption has come down through the years, and has been more or less a guiding principle in legislation and court decisions to the present time.

But a conflicting principle was soon adopted by the courts, namely, that the transfer of real estate at death was subject to taxation at the situs of the real estate. Following this, it seemed to be accepted at once, pursuant to the principle of taxation only once, that real estate should not be held subject to the tax at the domicile, when located in a foreign jurisdiction.

The rule adopted as to real estate should have been a warning that the alleged principle of taxation at domicile only, was unsound and needed re-examination; for real estate constituted much more than half of all property. If it is sound, as it undoubtedly is, that the transfer of real estate should be taxable only at its situs, no reason can be found why the same rule should not apply to tangible personal property. If a farm or store building, left by decedent in another state, should be taxable there and there only, it is not possible to find a sound reason why the livestock and farm machinery, or the stock of goods in the store building, should not also be taxed at the situs.

Since real estate and tangible personal property constitute the great bulk of our property, we now find that the theory of taxation at domicile is substantially abrogated, and should be cast into the discard. If this had been done long ago, this association would have needed no committee on inheritance taxation—except possibly to discuss uniform rates and exemptions, and the disposition of that small fraction of our property known as intangibles representing tangible property located in more than one state—and possibly to harry Congress in respect to the repeal of the federal estate tax.

Discarding the principle of taxation at domicile, we find at once that we must accept in its place the contrary principle of taxation at the situs of the property. And this, we are convinced, is the true principle that will bring us out of the mess of confusion and contradictions now existing, as indicated by the majority report. To state the present necessity briefly, we must back up and start over. As our foundation for a simple and equitable system of taxation, we must accept two fundamental principles:

1. The transfer of property of a decedent shall be subject to only one inheritance tax.

2. The transfer of property at death shall be taxed at the situs of the property.

As a corollary to the second principle, it is to be understood and accepted that intangible property—the mere paper representatives of the tangible property or evidences of title or interest therein—such as bonds, mortgages, land contracts, corporate stocks, bills of sale, bills of lading, warehouse receipts and similar securities, are taxable only at the situs of the tangible property which they represent.

When we accept and apply the above principles, we shall find that many of the problems now before us will have disappeared, and many others will have been greatly simplified. Let me indicate the probable results:

(1) Real estate left by decedent will be taxed as at present. This will take care of half the property of the country.

(2) Physical or tangible personal property will be taxed in the same manner as real estate—where located or commonly kept only. This will represent, say, twenty-five per cent of the nation's property.

(3) Intangible property, such as bonds, mortgages, stocks, etc. representing property located within a single state will be taxed in the state where the tangible property so represented is located. This will take care of, let us say, fifteen per cent of the property of the country.

(4) Intangible personal property representing interstate property will be apportioned for the purpose of tax among the states where the property is located. Let us assume this to cover ten per cent of all property, and therefore ten per cent of all inheritance taxes.

Let me remark here by way of parenthesis that the above fractions of the total property are purely hypothetical, and are subject to modification by each reader to suit his taste or his knowledge based upon research. There is still left a small fraction, almost negligible, of so-called property—promissory notes, book accounts, and personal debts—strictly not property at all—usually mere promises to pay money not yet earned. Probably they should be assigned to domicile.

The first three subdivisions above, covering ninety per cent of the property of the country, offer little difficulty. In the very great majority of estates, the domicile of decedent and the situs of his property will coincide in any event. In case of real estate located in another state, the procedure is established, and is relatively simple and inexpensive. In respect to tangible personal property, there is no reason why it should not be equally simple and inexpensive. In respect to securities representing property in a single

state, they should be handled by the tax commission or other centralized state department; and I know from experience that the procedure may be simple, brief, and inexpensive.

We have left, then, only the ten per cent of our total property, being securities representing interstate property. It is in relation to this small proportion of our property, transferred once in a generation, that all the turmoil is about. It is not worth the amount of heat engendered. It may not be easy to devise a simple and inexpensive procedure for that form of property under the system which I have outlined; but it has not been done under the present system. I am of the opinion still that it can be done, and that it can be done more readily under the general theory of taxation at situs than of taxation at domicile. In any event, when we adopt the principle of taxation at situs, this question will be approached from a different angle.

Accepting the principle of taxation at situs, we must go back to our state taxing officials and legislatures, and tell them a few things in plain English. We may remind them that a few years ago the Supreme Court of the United States said:

> "It may be regretted also that one and the same state should be seen taxing on the one hand according to the fact of power, and on the other, and at the same time, according to the fiction that in succession after death *mobilia sequuntur personam* and domicile governs the whole." *Blackstone* v. *Miller*, 188 U. S. 189.

But it declared that to be the law. This dictum rather encouraged taxation by the strong arm, and "according to the fact of power"; and with this encouragement, we have arrived at the present sad state of affairs for which this conference is so desirous of finding a remedy.

We may remind our legislatures and taxing officials that men have died, and before their widows and children could obtain the property left to them, they have had to pay inheritance taxes in several states—at the domicile; again where the property is located; again in the state where the corporation exists that issued their stocks and bonds; again in the state where the corporation kept a transfer office; and again in the state where decedent kept his securities in a safety deposit box. This is taxation "according to the fact of power." It well illustrates the maxim that the power to tax is the power to destroy.

We may tell our taxing officials and legislatures of a case now pending in our courts, where decedent died a resident of Massachusetts, leaving stock in a Maryland corporation, all of the corporate property, real and personal—some $25,000,000—being located in Wisconsin. After paying the three taxes in the three states, and

the costs of litigation, there will be some reduction of what President Roosevelt used to call a "swollen fortune". You may tell them of a Wisconsin case where the decedent died a resident of New York, leaving stock in the Northern Pacific Railroad Company, a Wisconsin corporation having 97½% of its property located outside of the state, and from which the executor paid to the state of Wisconsin a tax of $355,000. The decedent did not belong to Wisconsin, and the property did not belong to Wisconsin, except 2½%; yet under our current theory Wisconsin was entitled to the tax. This was ten years ago. I recall that the state officers heralded this instance to the people of the state and to the legislature then in session as a notable victory for the state. This was taxation "according to the fact of power". To me it seems quite like the case of one burglar bragging to another of his successful exploits. But better ideals prevailed, and in 1913 our laws in this respect were amended. Very recently the estate of a Wisconsin decedent was taxed in both Wisconsin and Minnesota upon a stock of lumber in a yard in Duluth, appraised at $100,000. Do you think the heirs felt that they had received a square deal? They did not.

We need to tell our legislatures and tax officials that in the field of inheritance taxation, taxing "according to the fact of power" is overdone, inequitable and immoral, when a tax is levied by a state upon the transfer of securities, merely because the transfer office of the corporation is located within the state, or because the deceased kept his securities in a safety deposit box in the state, or because the officers of a corporation saw fit to incorporate in a state other than that in which the property of the corporation was located. Why should the owner of two or three million dollars' worth of real estate in Chicago be permitted to move to Florida and take his real estate with him for inheritance tax purposes by incorporating in that state, and keeping his stocks there until his death? Think of the absurdity of saying that the filing of a document with an officer of the state of Maryland, by the officers of a Wisconsin manufacturing corporation, conveys $25,000,000 of Wisconsin property out of the state and removes it to Maryland for inheritance tax purposes. Can the notions and whims of corporation officers be allowed to play hob with our tax laws in this manner?

Even the great state of New York is acquiring a glimpse of the true principles. A few years ago she modified her law so as to require foreign estates to pay a tax upon the stock of New York corporations. This was only groping for the light. Now her law of 1922 requires foreign estates to pay a tax upon stocks of foreign corporations at a proportion of their value equal to the proportion of New York real estate represented in the assets of the corpora-

tion. Evidently her vision is clearing. She does not propose to allow her vast city real estate values to be removed to Florida, for inheritance tax purposes.

But the most drastic thing we must tell our legislators is that they must release their domestic estates from the tax so far as these estates consist of securities representing property foreign to the state. At present, in Wisconsin, we tax twenty per cent of the value of Chicago, Milwaukee & St. Paul stocks and bonds, left by non-resident decedents. We must treat the estates of our domestic decedents in the same way. We have domestic land and lumber companies, having all their property in the south or west. We do not tax the stocks and bonds of these companies, when left by non-residents. We must also exempt them to resident decedents, thus leaving the tax to the southern or western states where the property has its situs. A little tax may be lost, but we shall have taken the essential step toward justice and simplicity in inheritance taxation.

It may be assumed that every state has suitable statutory provisions prescribing the conditions under which foreign corporations may own property and transact business within the state. We find relatively little difficulty in dealing with corporations and arranging with them in relation to the proper authority for the transfer of stocks and bonds of decedents.

At present there are many difficult questions of residence or domicile, involving lengthy and expensive litigations, as illustrated by the *Harkness* case, and *Chambers* v. *Hathaway*, in California. In the latter case, decedent was found to be a resident in both Wisconsin and California, and the estate paid inheritance taxes accordingly. Under the principles which we advocate, you will see at once that questions of domicile become of little or no importance, and much expensive and troublesome litigation will be avoided.

We are entirely familiar with the argument and the theory upon which it is based—that the tax is upon the transfer, and not upon the property. This fiction was necessary to sustain progressive rates and to escape the rule of uniformity. But every dealer in securities, and every economist knows that a heavy inheritance tax, to which securities may be subject, makes them less desirable as an investment, and reduces their market value. This is only another way of saying that as an economic fact the burden of the tax falls on the property, notwithstanding the legal fiction. The law provides that the tax shall remain a lien upon the property until paid, and that the property may be sold to pay the tax. A chief argument in support of the inheritance tax is that it is adopted as a means of reducing the burden of the general property tax. If there is anything to this argument, it follows that the inheritance

tax should be imposed in the same location as the general property tax.

As this paper has now been extended beyond my original intention, I am not attempting to outline a procedure for dealing with securities of corporations having property in many states, such as the Western Union Telegraph Company. The Wisconsin proportion in that company is very small, only 2.40%. On a transfer of less than $50,000 it is not worth attention. These are details touching only a trifling fraction of property passing at death. They can be taken care of after the big problems are settled.

There is an old stanza with these lines:

> "If half the wealth bestowed on camps and courts
> Were given to redeem the human mind from error,
> There were no need for arsenals and forts."

So it is with this problem. If half the mental energy given to beating some other state out of taxes to which it is equitably entitled and to beating estates out of two, three or more taxes, were given to devising inexpensive ways of reaching only once that very small fraction of the nation's property represented by interstate stocks and bonds, we should receive great praise from the widows and orphans, executors and administrators, and the courts.

CHAIRMAN MCKENZIE: The subject is now open for general discussion.

CAPTAIN W. P. WHITE: I can see no justice in a tax that is imposed upon the estate of a husband and wife when the husband dies, and I can see still less justice when the wife dies. Husband and wife may own a great deal of property in common. It may be a joint production of both; it may be the production of one; then one of these individuals dies, and I don't see anything but the strong arm of the state stepping in and saying that it has a right to part of that property, because one of the owners has departed. The device of inheritance taxes is perhaps necessary in cases where the tax applies at the death of an individual who bore very little tax during life, but it never was reasonable as between husband and wife. The rule in regard to the situs of real estate and tangible personal property is all right, but intangible personal property ought not to be taxed, except at situs. The expense incident thereto takes away from the heirs a great part of their property, and it is not fair. It destroys the initiative; the incentive for saving, which men inherently feel in protecting the lives or welfare of their children. If we are going to have such laws, we are going to devise methods of escaping them. You cannot touch it when we give it away in such form that the law cannot reach it. We can sell our property for less than it is worth, and that will be

done. If you want to destroy property, go ahead with your inheritance taxation. The wealth of Great Britain has been destroyed by that very simple method, and Great Britain, instead of being a very wealthy nation, is gradually going down, until she will be one of the poorest nations on the face of the globe, due to the fact that they have inheritance taxation, and they will have taxed their wealth off the face of the earth.

CHAIRMAN MCKENZIE: Any other discussion?

ALBERT HANDY: Mr. Chairman, just a few words. I am very much impressed indeed by Mr. Harrington's plan. When he submitted it to me, I wrote him that he should present it to this conference. I thought it an excellent plan, if carried to a logical conclusion. In the event that it is done, it must be done by legislation, but in order that legislation shall prevail, constitutional safeguards must be broken down. If, for instance, we allow the State of Wisconsin, we will say, to tax stock of a New York corporation, owned by a resident of the State of New Jersey, merely because that corporation owns property in the State of Wisconsin, then you are destroying constitutional safeguards which prohibit the taxation of property which has no situs whatever in the state.

It must be clearly understood that the corporation and the property are two separate and distinct entities. A right of ownership in a corporation is not similar to a partnership right. It is simply an intangible right to receive at certain times certain dividends from the corporation, and in the event that the corporation is dissolved, to have a proper distributive share of the assets of the corporation. The owner of the stock hasn't a particle of right in any particular property owned by the corporation; and you might just as well say that if ninety-five per cent of the property of a corporation was located in Wisconsin, and five per cent in Ohio, the ownership of the five per cent of stock is vested entirely and completely in Ohio. That is my sole objection to this proposal of Mr. Harrington's; that he will do away with a very important constitutional safeguard, which is necessary in order to protect us from undue taxation.

In that connection Mr. Harrington remarked that in New York they were beginning to see the light, and that in 1921 they passed a law which would permit the taxation of stock of a foreign corporation owned by a non-resident decedent, when that corporation owned real property in the state. I want to add in that connection, that that statute has been declared unconstitutional by the appellate division of our supreme court. That makes five states of the Union which have declared the taxation by one state of stock of a foreign corporation, owned by a non-resident decedent, simply because that corporation owns property in the state, to be invalid

and unconstitutional, and those are the only five states in which it has reached the highest court of the state. I thank you, gentlemen.

(The statement by Mr. Handy, referred to by Mr. Belknap, is as follows.—Ed.)

TAXATION OF STOCK OF A FOREIGN CORPORATION OWNED BY A NON-RESIDENT DECEDENT WHEN SUCH CORPORATION OWNS PROPERTY IN THE TAXING STATE

ALBERT HANDY
Prentice-Hall Inheritance Tax Service

In this connection it may be stated that the right of the state to impose an inheritance tax exists only in cases where there is jurisdiction. This problem of jurisdiction may be considered under three heads. One, jurisdiction over the person of the decedent; two, jurisdiction over the person of the beneficiary; three, jurisdiction over the property. The first two factors may be eliminated from consideration and the issue then resolves itself into a question of whether the state has such jurisdiction over the property of the decedent as to enable it to impose a tax.

The limitations upon the taxing power are these: The state may not tax directly or indirectly real property located beyond its borders, even though owned by its citizens, nor may it impose a tax on personal property without the state, owned by a non-resident. We are then confronted with the question as to the status of the stock owned by a non-resident decedent in a foreign corporation having property within the state. It appears that an inheritance tax may be supported upon two theories—either it is an excise tax, imposed upon the privilege of transmitting or receiving property upon the death of the owner or it is a regulation of the right to take property by devise or descent, and hence any regulation, whereby the privilege or right is made subject to conditions or limitations is justified. What privilege then is granted by the state in which the property of the foreign corporation, the stock of which is owned by a non-resident decedent and which passes to non-resident beneficiaries, is located? Unless some right or privilege is granted, there is no jurisdiction to levy the tax. It has been contended, in support of the tax, that, as the price for the privilege of doing business or owning land in the state, a foreign corporation may be burdened with any condition to which a domestic corporation might be subjected. Doubtless many cases may be cited in support of the general proposition involved, but a careful examination in these cases will clearly indicate that they are not

in point. Even a cursory analysis shows that the tax is not a limitation placed upon the corporation, but upon its shareholders, and therefore the statement that corporations are not citizens and, as such, entitled to the full privileges of citizens of the several states within the meaning of article 4, section 2, of the federal Constitution has no relevancy; in fact, the persons subjected to tax, being citizens, would unquestionably be entitled to the constitutional protection. It is, for the sake of argument, not denied that the state might require a report of all transfers from the estates of decedents to the beneficiaries or legal representatives, or possibly even require the corporation to maintain a duplicate transfer register in the state; in fact, North Carolina does require certain information of this nature to be furnished by all foreign corporations doing business within the state, but it is necessary to draw a clear line of demarcation between regulation of the corporation and regulation of the individual stockholders of that corporation. The one is but a creature of the law and has no legal rights, except those conferred upon it by statute; the other is a citizen, entitled to the protection and privileges with which he has been hedged around by the constitution.

There is no analogy between the imposition of a franchise tax on a foreign corporation owning property or doing business in the state, and the imposition of an inheritance tax upon the transfer of stock of the same corporation from a non-resident decedent to a non-resident beneficiary. The question is not a novel one in our courts. Massachusetts, Illinois and Idaho have all held that such a tax was beyond the jurisdiction of the state to impose. In Massachusetts the question arose as to whether or not reciprocal exemptions might be allowed, in a case where Michigan had imposed a tax upon the stock of a foreign corporation transferring stock of a foreign corporation owned by a non-resident decedent, where the corporation owned property in Michigan. The supreme court of Massachusetts held that this was an invalid impost (*Welch* v. *Burrell, Treasurer,* 223 Mass. 87). In Illinois it has been decided in several cases that such a tax was illegal (*People* v. *Dennett,* 276 Ill. 43; *Oakman* v. *Small,* 282 Ill. 360. In Idaho the same question arose in the case of *State ex rel. Peterson* v. *Dunlap* (156 Pac. 1141), which involved the Harriman estate. In this case the tax was attempted to be imposed by reason of the fact that the Harriman estate owned stock of the Union Pacific Railroad Company, which corporation in turn owned stock in the Oregon Short Line Railroad Company, both of which were foreign corporations. The latter corporation, however, had property in Idaho. The court held that such a tax might not be imposed. In two of the cases above cited there was no specific statute providing that the imposition of a tax upon the stock of a foreign corporation, owned by a

non-resident decedent, when such corporation owned property in the taxing state. Such a statute, however, exists in Oklahoma, and it was decided by the supreme court of that state, within the last year, that this statutory provision could not be upheld (*Harkness' Estate*, 204 Pac. 911). A similar ruling has been made by the appellate division of the New York supreme court (*McMullen's Estate,* 192 N. Y. Supp. 49). Two cases are now ending—one in Wisconsin (*Taylor* v. *Dane Co.*, U. S. Dist. Ct.), the other in North Carolina (*R. I. Trust Co.* v. *Watts,* Wake County Superior Court)—to test the validity of such a provision.

It is then to be noted that the *invalidity* of such a provision has been asserted by every court of appellate jurisdiction, where the issue has been tried, and it cannot be doubted that its unconstitutionality will finally be declared by the United States Supreme Court.

Joseph S. Matthews of New Hampshire: I think we all sympathize with Mr. Harrington's desire to simplify the administration of the inheritance tax law. That is what we are all looking for, but it seems to me that his plan, under the laws as they now exist, while it may be very desirable, is legally impossible. The courts of two states have held practically to that effect. The New Jersey court has held that the state of New Jersey has not the power to tax the passing of personal property of a non-resident from the deceased to his heirs or legatees; that when a tax is assessed upon the personal property of non-residents, it is assessed upon the right to take property away from the state, and while it may be called a legacy tax, it is not such in fact; it is simply a tax upon the right of the executor to take the property out of New Jersey and remove it to the state of domicile.

In my own state the court has held that the transfer taxes levied upon the property of our residents by other states cannot affect the distribution of the property in our state, otherwise than to reduce the amount of property in the hands of the executors for distribution; that the laws of the other states have no force in New Hampshire as regards the distribution of estates, or the taxes that shall be levied upon the legatees in the course of such distribution. In other words, if New Jersey assesses a tax upon personal property in that state belonging to a resident of New Hampshire passing by will, because some of the cash legacies would be taxable under the laws of New Jersey, those legatees are not charged with that tax when the distribution is made in New Hampshire, because the New Hampshire court holds that the law of New Jersey has no force in New Hampshire, but those legatees receive their legacies in full, and the charge falls upon the residuary legatee, simply because the total estate is reduced by the amount of the tax and there is so much less to go to the residuary legatee.

Now, Mr. Harrington well says that there has been no trouble about the tax on real estate. That is because real estate passes by the law of the state where it is located, hence it is taxed in that state and no other state is in a position to reach it. But personal property has been recognized from the beginning of the republic as passing under the laws of the state of domicile, and it is the passing under, and by virtue of those laws, that it is taxed, and that is where all the trouble has arisen. The state of domicile is in a position to impose a tax upon transfers made under the provisions of its laws, and it has uniformly held that those laws extend, so far as the distribution of the property is concerned, to all personal property, wherever located. That is recognized everywhere and the courts recognize it in connection with the legacy taxes, and there is no logical distinction between tangible personal property and intangible personal property in the application of the legacy tax law, because tangible personal property passes like intangible personal property, under the laws of the state of domicile. It is only when we get into the realm of real estate that a different rule applies in the matter of distribution, and so a different rule applies in the application of the legacy tax law, because the right that is taxed is a right exercised under the laws of the state controlling the devolution of the property.

Now, Mr. Harrington's plan, if it were to be carried out, and carried out logically, would involve at the outset a change in our laws of distribution. If the states were prepared to change those laws and provide that personal property like real estate should pass in accordance with the law of the state in which it is located, then it would be perfectly easy to apply Mr. Harrington's principle.

Until they are prepared to do so the states must either adopt the same rule of comity with regard to legacy taxes which they follow with regard to the distribution of the personal property of deceased persons, or the present unsatisfactory and sometimes exasperating conditions are bound to continue.

My time is up and I think perhaps I have covered the point I wish to make.

CHAIRMAN MCKENZIE: I think in view of the fact that we have another very important paper to hear tonight, that we ought to terminate this discussion now, unless there is serious objection on the part of the conference. The next item that we have is the question of the taxation of natural resources. This was postponed from the second session and will now be discussed by Mr. George Vaughan of Arkansas.

GEORGE VAUGHAN of Arkansas: I shall be as brief as possible. I think it will take me about twenty or twenty-five minutes. I hope that you will all remain and discuss the paper, because I certainly want the views of those who differ from me, especially.

TAXATION OF NATURAL RESOURCES

GEORGE VAUGHAN
Little Rock, Arkansas

1. *Introductory*

By the term Natural Resources is comprehended all that mass of economic goods or available benefits which are the direct heritage of the race—those basic bounties originally bestowed by a munificent Creator upon the children of men.

The processes by which natural resources have come into existence are superhuman as distinguished from the artificial products fashioned by the hand of Man, whose dominion over "the earth and all the things that therein are" is as ancient as it is unchallenged.

Natural resources in the present state of society may be divided into two generic classes. The first class includes those unappropriated benefits, more or less widely diffused, which are owned collectively by the community at large. To this class belong a wholesome water-supply, a salubrious climate, propitious seasons and the cosmic urge of a conquering race. To the second class belong those resources of a physical nature, such as superior coasts and harbors, valuable inland waterways, magnificent watersheds, inviting development of enormous hydro-electric power, also extensive deposits of ores, of coal and precious metals, and finally the virgin forests, capable if duly conserved, of promoting the comfort and protection of generations yet unborn.

The last named class alone—physical products of nature—may be further subdivided into: (1) alienable and consumable, and (2) non-alienable and indestructible. It is to the sub-class—alienable natural resources—that any question of taxation germane to the present conference can properly relate. It shall, therefore, be my purpose to confine this paper, which must be in briefest outline, to those methods now extant, of taxing basic and non-reproducible resources, found under private ownership, as the resultant alone of the slow and imperceptible processes of nature.

At the outset, then, let us note that the subject-matter of our present inquiry is essentially a wasting asset. The supply of these resources, though vast, is limited. Many of them have been accumulated by the gradual operation of natural forces through the centuries of a prehistoric age; yet though "rock-ribbed and ancient as the sun," they are susceptible of rapid depletion and waste. And when they are gone, society has sustained a loss, irretrievable and complete.

We need not here assume, however, the extreme position of advocating a prohibitive ban, under the guise of a tax. To restrain extravagant extraction of mineral deposits or wanton and too rapid

utilization of growing trees, may or may not be advisable as a conservation policy. Yet it is eminently proper for this association to acquaint itself with prevailing modes of taxing this peculiar class of property. We should certainly seek to correct existing inequities, and devise, if possible, improvements more nearly calculated to equate the tax burden of such interests with that borne by the general mass of persons, property and business, whence must come all public funds.

2. Applicability of the ad valorem tax

In the present confused situation over problems of public finance the clamor for new engines of taxation is more disconcerting than enlightening. Novel theories and plans include the separation of state and local taxes; extension of the inheritance tax, the franchise tax, and the income tax; the occupation tax; the severance tax; the sales or turnover tax, and the introduction of sundry excises, whose classification baffles both courts and doctrinaires. Each of these devices has certain merits and all, perhaps appropriate functions. Many, however, have never stood the test of time. Certainly none will be able to entirely supplant that "old stand-by"—the general property levy.

No revenue system has ever been so mercilessly condemned as the property tax, nor has any fiscal scheme been more sadly abused. Theoretically, the property tax is at once the simplest and most direct, and in view of the democratic structure of our civil polity, the most easily applied. Yet in practice, through a distorted idea of the magic of the uniformity principle it has been most woefully botched.

No scheme, if meritorious in its possibilities, however, should be rejected because patient effort is required in its fruition. The airplane and the telephone in their inception presented what both critics and laymen pronounced insuperable barriers; but by patience and persistent effort on the part of science, the iridescent dream of the '70s and the wild vagary of the later decade have become realities of today.

The property tax, though despised and berated for its hereditary faults, is destined yet to be the chief cornerstone of the future fiscal edifice. It behooves the membership of our organization, set apart as we are from a less discriminating public, to depart with reluctance from a system which, after all has been said against its past performance, holds yet a hope for the future not vouchsafed by any of its ambitious substitutes.

The shortcomings of the property tax arise for the most part from sources external and superficial. The chief cause of disappointment is due to the excessive commercial development of the community, which has often traveled far ahead of any legislative

program. But, as will be later shown, a path is open whereby the ascertainment of value by the taxing power may be successfully attained on the same scientific basis long in vogue throughout the business world.

3. *A broad prospective necessary*

The taxation of natural products involves a thorough understanding of fundamental economic facts. When these are comprehended, the application of the *ad valorem* tax to such plainly taxable objects is facilitated by the use of modern aids familiar to every large-scale business man.

At the threshold of this discussion, let me impress the thought that in the treatment of natural resources, two aspects of value are presented—the actual and the potential—the present and the prospective. The virgin forests of Canada represent a large portion of the potential wealth of that dominion of the British Crown. Likewise the unexplored oil fields of Mexico, the nitrate deposits of Chile and the diamond mines of Kimberly and the neighboring gold fields of the Transvaal constitute respectively the illimitable heritage of those countries enriched by the munificent hand of God.

Natural resources, however, are not liquid, like commercial paper. They have no realizable value, except through the increase of population and the pressure of demand. Eventually the day comes, however, when purchasers, willing to pay a valuable consideration for these units of wealth, appear and cry their bids in civilization's stock exchange.

Commercial cupidity is gradually awakened *pari passu* with the march of human progress. Unless restrained by a far-visioned national policy, in obedience to the law of supply and demand, all natural resources inevitably gravitate into private ownership. Often the consideration paid for these basic units is a mere song, with no relation to the true potentialities of the properties transferred. As population increases natural resources are depleted often in geometrical progression. This process, of course, involves a certain and steady, though sometimes slow, enhancement of intrinsic worth.

4. *Enhancement through assembling of units—integration*

An incidental factor is the increased value gained through the mere act of assembling under one control originally separate units.

a. City property.—In populous centers an "unearned increment" follows the assembling of various small parcels of ground to compose a larger and strategic plot, of sufficient size to justify the erection of a single improvement of great and permanent worth. In cities the product of such assembling of tracts is called "plottage," and its enhanced value is recognized in the business world, as it should be in the taxation laboratory.

b. Timber lands.—In the development of timber lands, it is a

well known fact that greater economies are secured by large operations. The larger sawmills seek sufficient accessible stumpage to justify the building of tramroads and other plant facilities for reducing the unit cost of manufacture .

c. Mineral deposits.—In the mining world, the first inquiry after the discovery of a promising deposit of ore, is as to the extent of the local occurrences. Exploration of adjoining territory, to ascertain the quantity as well as the quality of the deposit precedes a decision as to the commercial value of the prospective mine. The ton-unit is given only a tentative valuation until it can be ascertained whether the mineralized area is sufficiently extensive to justify capital expenditure adequate for its economical development. If so, each unit becomes for that reason alone of greater value, and is accordingly appraised and re-inventoried in the cata logue of commerce.

The famous decision of the interstate commerce commission in 1912 abrogated the unlawful practice of a division with proprietory lumber companies of transportation revenues. One hundred tap-lines owned by lumber companies of the southern pine territory had been receiving millions of dollars for service which the commission held to be that of mere plant facilities. It was said (p. 300):

> "While Mr. Foster, president of the tap-line, and also president of the lumber company by which it is owned, was testifying, it appeared that it was the desire to legalize the allowance that led to the incorporation of his tap-line to Landers, and the desire to monopolize the forests and thus control the timber that led the lumber company to retain the ownership of the logging road beyond." *The Tap-Line Case,* 33 I. C. R. 277.

The price paid for stumpage is almost always a measure only of the value placed upon it by the vendor, who if not in a position to operate it, may be willing to part with it for much less than its real value.

In buying from original owners operators rarely pay full prices, but almost invariably what they believe to be a small fractional part of the real value.

The larger or normal prices are obtained only by those vendors who are independent or who themselves are operators and know real values and are in position to realize them by development.

From the foregoing it appears that the market value of natural resources, such as a block of timber land, a million feet of stumpage, an oil lease in proven territory or a mining claim of ascertained extent, should be determined for purposes of taxation, with an eye to the real potential value under present or future ownership.

5. *Examples of enhancement through unearned increment*

It is an historic fact that enormous holdings of timber lands throughout the country have been assembled by speculators for considerations little less than gratuitous. Purchase from small farmers, non-residents and others, through options and intermediate contracts, before the true value of the products are known has been the rule, rather than the exception. For example, millions of acres of pine timber in Arkansas which were acquired a few years ago on the basis of from ten cents to twenty-five cents per thousand, for stumpage, would not now be sold for less than from five to ten dollars.

Moreover, after a given territory is sufficiently blanketed by the operator's holdings, his buying program usually stops, for the obvious reason that remaining stumpage tributary to the mill can, by waiting, be had at a price much less than its actual worth. Since it is left so scattered as to be desirable, from a manufacturing standpoint, by no competing interest, the market for the isolated tract is virtually destroyed.

It is a common practice, indeed, where two or more lumber companies enter a given timbered region, to immediately choke all competition by a division of territory among them, so that each operator may purchase at the mutually fixed maximum price for timber, knowing that it will not be exceeded by his friendly adversary. Thus there can be no clash of interest by reason of one company invading the other's territory.

The Aluminum Company of America, in twenty years, placed a hitherto unknown metal fourth in commercial rank. It has built up a dominant monopoly in its field, secure in its holdings of mineralized lands in Arkansas, affording a supply of bauxite for a half-century. This close corporation has managed to buy up or freeze out all competition, and has been enabled by adroit tactics to acquire, for less than a million dollars, a mining property whose book value today exceeds nine million dollars.

And yet, by the use of that fetich phrase "market value", in a primitive statute, written years before mineral development was foreseen, the law ignominiously falls down. It fails to anticipate the scientific phases of potential value which private exploration has later brought to light. *Am. Bauxite Co.* v. *Board of Equalization*, 119 Ark. 362; 117 S. W. 1151.

6. *Valuation should comprehend both present and prospective factors*

As stated by Prof. M. H. Hunter in the introduction to his recent "Outlines of Public Finance"

> "The march of progress in the development of government is from the simple to the complex, and the more complex the

organization the more numerous and difficult are the problems which present themselves."

In casting about for intelligent guidance in the difficult task of evaluating property, tax administrators may do well to heed the authoritative ruling of the supreme court of the United States.

In *Cleveland C. & St. L.* v. *Backus,* 154 U. S. 439, 445; 38 L. ed. 1041, 1046, Mr. Justice Brewer laid down this forceful formula:

> "The rule of property taxation is that the value of the propery is the basis of taxation. It does not mean a tax upon the earnings which the property makes, nor for the privilege of using the property, but rests solely upon the value. But the value of property results from the use to which it is put, and varies with the profitableness of that use, present and prospective, actual and anticipated." See also *Monongahela Navigation Co.* v. *U. S.,* 148 U. S. 312; 37 L. ed. 463 (value for condemnation).

7. The public's right to technical service

What has already been said indicates that the true or "market" value of mineral properties, and especially of those accumulations of natural resources which are hidden and underground, cannot be intelligently appraised by the untrained local assessor. Without special machinery or equipment for the scientific admeasurement of such secret values, they would remain undiscovered and sealed, so far as the public is concerned, and the real worth of this class of property, though well known in the industrial and commercial world, would never be reflected upon the tax books.

Yet such properties are freely bought and sold, hypothecated and transferred for a definite cash consideraion. Hence it is plain that some mode of reliable appraisement exists which is acceptable in financial and banking circles. It is for the employment of the same modes of evaluation, for the purpose of taxation, that economists and progressive statesmen are beginning to interpose a most earnest plea.

As aids in determinng the value "present and prospective" of basic material resources, the state should have at her beck and call the best talent of the scientific world. Two fields of modern research furnish the eyes whereby, with microscopic accuracy, technical values are identified in the marts of trade. These two eyes are the appraiser and the accountant. The appraiser's services are indispensable in ascertaining inventory values, while those of the accountant are equally necessary in interpreting books of account or the record of business transactions, and of profit and loss.

The disinterested auditor's and engineer's report, the balance-sheet, the appraisal, and the profit and loss account all are "bills of

particulars," without which a valuer must grope in the dark—whether the conclusion sought is for purposes of condemnation, rate regulation, capitalization, taxation or for sale.

The state, in her sovereign role, is the author, creator and guarantor of property rights.. She is the mother-protector of all operations whereby natural resources are reduced to individual control. The state by her grace accords the usufruct. Should she not, in return for such invaluable support, be yielded her definite dues? Whether it be a share of the income from operations, or a rental charge for profitable forbearance to develop, the state should get hers first.

A well-organized appraisal company is equipped not only to cruise and value forest properties, but to appraise all classes of mining properties as well. They possess facilities for accurately evaluating both real estate devoted to such special uses and also the mining machinery, plant, tram-roads and operating facilities of any mill. They are, moreover, thoroughly capable of cruising and appraising undeveloped mineral deposits. In this respect, their working equipment is more adequate than that of the geologist, who is not usually prepared to place on property a commercial value.

The petroleum and natural gas industries with their infinite ramifications and marvelous expansion in recent years present the most intricate problem from the taxation standpoint. Special treatment is more imperative perhaps than in any other natural product. Yet a standard appraisal offers proven services in the disinterested investigation and valuation of every type of oil and gas property, embracing the equipment for refining, transportation, distribution and marketing of petroleum and its by-products.

The appraisal establishes values through a careful analysis of every influential factor, including the worth of the improvements, age of production, past production records, state of development of lease, location of property with reference to continued production, thickness and nature of oil-producing sands, probability of deeper sands in unexplored depth to which additional wells could be drilled and their probable cost, the cost of lifting oil, salvage value of equipment on exhausted leases, existing market conditions in the oil industry, etc.

Through its engineering department, such a company conducts a constant research in every phase of industry. Its personnel is presumably thoroughly trained and has developed practical experience; its reports have been approved and utilized by a large and satisfied but cautious clientele in the most conservative fields.

One of these companies has appraised upwards of 20,000 diversified commercial properties, public utilities, mineral and petroleum resources, during the last quarter of a century, and enjoys a pres-

tige in banking and financial circles and among the investing public. In financing the purchase or sale of properties and in the formation of mergers the appraisal today is indispensable. It should certainly be of incalculable service to the public in the difficult and technical process of taxing natural resources upon an *ad valorem* basis.

By "appraised values" is meant a "valuation arrived at under the personal supervision of thoroughly qualified executives, whose skilled judgment is the result of many years' experience in valuation work, and who have the assistance of trained appraisers, using organized cost analysis records, statistical data, and being guided by checks of definite, predetermined and tested standards of valuation." An appraisal company is an executive organization, using established methods and records, which insures the testing of appraised valuations against well-established standards, and guarantees their uniformity and provability. The test of an appraisal organization is the extent to which it has reduced valuation work to an exact science.

Scientific valuations of mineral properties have been made by several of the more progressive mining states, and in every instance with enormous public gain. In Michigan the assessed valuation of the iron properties was increased pursuant to the appraisal of J. R. Finlay in 1911 from $27,000,000 to $85,000,000. And the 1921 assessment, in spite of the ten years depletion, due to new discoveries, reached the goodly total of $117,000,000.

The validity and effectiveness of a scientific appraisal is well illustrated by the experience of this state. In 1911 the board of tax commissioners, acting under authority of act No. 114 of 1911, employed Mr. Finlay, an expert mining engineer, to assist it in making an appraisal of mining properties. He was aided by Dr. C. K. Leith, Professor of Geology in the University of Wisconsin, and a corps of junior assistants. The total cost was less than $26,000.

The concrete result—the fruit of enlightened legislation, coupled with fearless administration by an efficient tax commission — is shown in the following table:

Counties	*Local assessment*	*Finlay's appraisal*	*As reviewed by tax commission*
Gogebic	$ 4,943,158	$ 41,560,000	$28,343,100
Dickinson	3,735,800	11,508,000	7,447,500
Iron	1,993,500	23,339,000	15,051,800
Marquette	8,951,050	42,734,000	34,800,000
	$19,623,508	$119,150,000	$85,642,500

The procedure, of course, was subjected to the acid test of judicial attack; but in the two test cases the assessments were fully

sustained: *Sunday Lake Iron Co.* v. *Wakefield* (1915), 153 N. W. 14; *Newport Mining Co.* v. *Ironwood* (1915), 152 N. W. 1088.

In the Sunday Lake case the plaintiff's property had been assessed by an inexperienced local assessor who, "proceeding in entire good faith," adopted a value which his predecessor had placed upon the property—$65,000. The state board, in the light of the Finlay appraisal, raised the assessment to $1,071,000. The taxes were paid under protest, and the company promptly sued to recover what it termed the excess taxes for the current year, amounting to $31,910.45.

The supreme court of the state, in a unanimous decision, sustained the final assessment and affirmed the decision of the lower court which had approved and confirmed it.

On appeal to the United States Supreme Court, the cause was affirmed, that court holding against the iron company on the two points urged, viz: (1) that the failure of the board, because of alleged lack of time and inadequate information, to cause a general survey of all property, did not invalidate its action with respect to the Sunday Lake mine; and (2) that a mere error of judgment, if existing, did not support the claim of discrimination, since the good faith of the taxing officials is presumed. *Sunday Lake Iron Co.* v. *Township of Wakefield,* 247 U. S. 350; 62 L. ed. 54; 38 Sup. Ct. 495.

In the companion case of *Newport Mining Co.* v. *Ironwood,* the total actual real estate value of Gogebic County was $56,467,012, and the assessment by the local assessors of both real and personal property was only $12,829,605. Among the properties was that of the Newport mine, whose assessment was at $2,188,640, and was appraised by Mr. Finlay at $13,400,000. The value finally fixed by the commission was $8,535,000. Taxes based on this revision, in the sum of $98,996, were paid under protest, and the suit for recovery followed.

In an exhaustive opinion the court sustained the scientific valuation, notwithstanding the contention that the expert appraisal related only to the mining property, leaving untouched all other real estate and personal property of the county, urged as under assessed to an equal extent.

It was further held in this case that the state is not limited to the capitalized royalty received by the owner of mining property, since the royalties themselves may be undervalued and the property may be worth more than the owner received. Says the court (p. 1093):

> "It will be admitted that the availability and value of minerals, unmined, are not matters of common knowledge, nor to be correctly ascertained or estimated except by men possessed both of certain particular information and of expert knowledge."

And again, apropos of the principle we are emphasizing in this paper, the court continues (p. 1094):

> "There is no reasonable ground for contending that the state may not use the methods of business to ascertain such values. In such a case, it is not compelled to ignore, or discount, the facts of demonstrated availability, quantity, and quality of mineral. If a rule or method exists by which engineers and business men ascertain the values of ore bodies for the purpose of buying and selling them, if no better rule is or can be suggested, how can it be said that the rule is wrong in principle when adopted by the state? The state must, of necessity, treat the peculiar subject of taxation as the subject requires, not to change or modify a cardinal rule of taxation, but to apply it. Upon this record no other rule is suggested, and the rule employed is conceded to be the rule of engineers in like cases."

Time and space forbid mention of other astonishing tax values uncovered by scientific surveys from time to time in Minnesota, Wisconsin, Arizona, Utah, Pennsylvania, and recently in New Mexico.

It has wisely been pointed out:

> "A valuation reached by a scientific survey is fundamentally an analytical appraisal. Opinions are used only when carefully checked by actual sales and transfers of property in the industry. Because they are the result of analysis rather than estimate, *they are capable of proof.* An opinion is likely to be shaded by a number of factors; while an analysis is impersonal and is not subject to shading. Analytical appraisals are scientific, provable and precise, whereas many opinion valuations are merely the result of hit-or-miss guessing."

8. *The ideal system of taxation is a composite*

If final equality in taxation is ever to be achieved, according to Adam Smith's famous dictum, the means for attaining equality must be so elastic as to be adapted to changing conditions. In the march of civilization, taxation should keep abreast with progress.

With respect to natural resources as a taxable subject, two propositions are self-evident: (1) the steady increase of population, and (2) the steady depletion and final consumption of basic resources.

As the demand for satisfaction of human wants gathers momentum, the basic and non-reproducible means for such satisfaction, represented by what we now term natural resources, is gradually consumed and finally disappears. In this depleting process the quantity units automatically enhance in value in inverse ratio to the

available supply. The scale of values thus registered in the market should be reflected also on the text books.

In the face of this inevitable situation then, is it not madness to continue the slipshod method of permitting the owners of these fast disappearing resources virtually to assess themselves. The formulation of any effective plan for the ascertainment of true values of private holdings of natural resources requires indeed much thought and patient investigation. This, however, should be no obstacle in the way of undertaking so vital and important a task. It does not discourage private initiative when these properties are passed upon for the purpose of mortgage or sale. The same procedure by which a scientific valuation is approximated in voluntary transactions should be available when the state annually claims her modicum of taxation.

It will not do to say that an income tax alone produces equality and justice in such cases, for even the income tax cannot be universally applied, without unequal results.

The ideal system of taxation is a composite structure, including the machinery of the property tax, where that is indispensable, and the more direct incidence of the income tax where that will better fit. In addition, various forms of business taxes which experience has proved to be efficacious invite investigation. In the treatment of such eminently appropriate subjects of taxation as minerals, building stone, forests, fisheries, water-sheds, and other natural resources, research should be broad and decision definite.

In view of the vital economic importance of these subjects, the general property tax now applicable thereto should not be given up. On the contrary, the system should be perfected in its ramifications, so that the true potential, as well as actual, presently-realizable, values, without regard to market considerations in the narrow sense, may be bared and a proper rate applied.

This recommendation is contained in substance in the special report of the committee on mines taxation, considered at the Salt Lake City conference in 1920, where it was said (Proc. 13th Conf., p. 410):

> "Approved methods of determining mining values for taxation should not differ in principle from those used in ordinary commercial transactions, for whatever a property is worth commercially, it should also be worth for taxation."

To this concise dictum might be added the words of authority in *Adams Express Co.* v. *Ohio State Auditor*, 166 U. S. 185, 220:

> "Now, it is a cardinal rule which should never be forgotten that whatever property is worth for the purposes of income and sale it is also worth for purposes of taxation."

No clearer statement of the peculiarity of mining property has ever been made than that of Mr. Justice Pitney in the now famous case of *Stratton's Independence* v. *Howbert,* 231 U. S. 399; 58 L. ed. 285, where he said, at page 413:

> "The peculiar character of mining property is sufficiently obvious. Prior to development it may present to the naked eye a mere tract of land with barren surface, and of no practical value except for what may be found beneath. Then follow excavations, discovery, development, extraction of ores, resulting eventually, if the process be thorough, in the complete exhaustion of the mineral contents so far as they are worth removing. Theoretically, and according to the argument, the entire value of the mine, as ultimately developed, existed from the beginning. Practically, however, and from the commercial standpoint, the value—that is, the exchangeable or market value—depends upon different considerations. Beginning from little, when the existence, character and extent of the ore deposits are problematical, it may increase steadily or rapidly so long as discovery and development outrun depletion, and the wiping out of the value by the practical exhaustion of the mine may be deferred for a long term of years." [This case arose under the special excise tax act of Aug. 5, 1909, 36 Stat. L. 113-18.]

In denying the company's claim for a credit for the depletion of the mineral supply by the process of mining as an element to be considered in determining the factor of depreciation, the opinion continues (p. 415):

> "As to the alleged inequality of operation between mining corporations and others, it is of course true that the revenues derived from the working of mines result to some extent in the exhaustion of the capital. But the same is true of the earnings of the human brain and hand when unaided by capital, yet such earnings are commonly dealt with in legislation as income. So it may be said of many manufacturing corporations that are clearly subject to the act of 1909, especially of those that have to do with the production of patented articles; although it may be foretold from the beginning that the manufacture will be profitable only for a limited time, at the end of which the capital value of the plant must be subject to material depletion, the annual gains of such corporations are certainly to be taken as income for the purpose of measuring the amount of the tax."

9. *Typical modes of taxing mines*

Perhaps the best typical example of the special taxation of

"natural resources" *co nomine* is found in the severance tax of Louisiana. A provision in the constitution of that state, adopted in 1921, reads as follows (art. X, sec. 21):

> "Taxes may be levied on natural resources severed from the soil or water, to be paid proportionately by the owners thereof at the time of severance. Such natural resources may be classified for the purpose of taxation and such taxes predicated upon either the quantity or value of the product at the time and place where it is severed. No severance tax shall be levied by any parish or other local subdivision of the state.
>
> No further or additional tax or license shall be levied or imposed upon oil or gas leases or rights, nor shall any additional value be added to the assessment of land, by reason of the presence of oil or gas therein or their production therefrom."

At the date of the adoption of this article there had already been in uncontested operation in that state since 1916 successive severance tax laws, the latest being act No. 31, approved June 30, 1920, which levied a license tax "upon all persons, firms, corporations, or associations of persons engaged in the business of severing natural resources from the soil or water." So a proviso was incorporated into the constitutional article above quoted, reading as follows:

> "Provided, that until the Legislature shall have enacted laws carrying into effect the provisions of this section, all existing laws relating to severance taxes or licenses, and to the assessment and taxation of land producing oil or gas shall be and remain in full force and effect. Notwithstanding any legislative appropriation heretofore made or any allocation in this Constitution made, the Legislature shall allocate a portion of the severance tax on oil or gas not less than one-fifth of the amount collected therein to the parish from within which such tax is collected; provided, that the amount thus allocated shall not exceed two hundred thousand dollars ($200,000) to any parish in any one year.
>
> The Legislature shall provide for the distribution of the funds allocated to the parishes under this provision among the governing authorities having jurisdiction over the territory from within which such resources are severed and tax collected."

The legislature of 1922, after much debate thereupon, increased the rate on the production of oil from 2% to 3%, by act 140, effective Jan. 1, 1923. In the opinion of Joseph B. Elam, the president of the Mid-Continent Oil & Gas Association, of Louisiana, the new

rate will require the industry to pay an additional $800,000 on its production, while the tax on all other natural resources remains the same. Hence there has been a storm of protest, and at present a suit is pending whereby the industry, in the words of Mr. Elam, proposes to "avail itself of those agencies of correction which the Constitution of the United States fortunately provides."

Also, according to Judge T. M. Milling, attorney for the Standard Oil Company of Louisiana, three per cent on the gross output of an oil well is in effect a gross income tax, and in many instances confiscation. He further maintains that such an exaction is in direct opposition to the theory that taxes should be in proportion to the benefits derived.

Since the Louisiana law and analogous statutes in Texas, Minnesota, Pennsylvania and other states impose this special license or occupation tax, in addition to the general property tax, the examples can hardly be said to afford a fair test of the desirability of the output exaction as a substitute for the *ad valorem* tax. The present occupation tax in Minnesota, approved April 11, 1921, since it superimposes upon the existing burden of *ad valorem* taxes a tax equal to six per cent of the valuation of all iron ores, operates so heavily upon the industry as to provoke resistance by the affected interests, now paying $18,000,000 annually in property taxes. The new law will add about $2,000,000. Hence it is that the final outcome of the pending test case (*Bennett Mining Co.* v. *Lord, et al.*, — Fed. —, decided May 24, 1922) will be looked upon with great interest, alike by the affected interests, students of taxation and the general public.

The Minnesota federal court, in the test case cited, sustained the law, holding that the mere mining of ore was a business, apart and independent from that of selling or transporting the product, and that as a business mining may lawfully be made the subject of an excise or occupation tax, citing *Stratton's Independence* v. *Howbert,* 231 U. S. 415; that the tax in question was an excise upon this business and not one upon the ore or the income from its sale, and that the method of determining the tax was not so inequitable as to render it obnoxious to the uniformity clause of the state constitution or violative of the Fourteenth Amendment, citing *American Mfg. Co.* v. *St. Louis,* 250 U. S. 459, 463.

Other states where special taxes upon the mining industry, additional to the general property tax, rather than in lieu thereof, and justified upon some legal theory or other, are the following:

The Texas gross receipts tax,
The Alabama tonnage tax,
The Pennsylvania output tax,
The West Virginia business ta

A review of the respective provisions of these various laws is impossible in this paper, but reference is made to an article by the writer in the *Bulletin* of the National Tax Association, May 1922, on "The Severance Tax". In perhaps every state where this tax exists, it is levied expressly upon or for the privilege of carrying on certain business transactions, and in the absence of the iron-clad shackles of property taxation, great disparity in the ultimate burden results.

One of the most interesting and elaborate opinions in the literature of this branch of the law is that handed down by the court of common pleas of Dauphin County, on Feb. 1, 1922, in the Pennsylvania case of *Heisler* v. *Thomas Colliery Co.*,[1] wherein the distinction between the businesses of mining anthracite and bituminous coal, as the basis for the legislative classification, is presented with great ability and convincing force.

The power of the state to distinguish, select and classify objects of taxation has a wide range of discretion, and in the Oklahoma test case on the gross production tax of that state the supreme court recognizes this legislative discretion, and asks the question (*In re Wolverine Oil Co.*, 154 Pac. 362, 367):

> "Is the present act, levying one rate of tax on oil and gas, and a lesser rate on ores bearing lead, zinc, jack, gold, silver, copper, or asphalt, and which omits a gross production tax on coal, in conflict with this rule? Clearly it is not. That mining property or the business of mining may be placed in a class by itself and taxed by some method peculiarly appropriate to that class is a valid exercise of a constitutional right on the part of the legislature, and needs the citation of no authorities in its support."

But the learned justice might have gone further and pointed out obvious characteristics, inherent in the mineral products selected, which afford sufficient bases for different treatment in the revenue law. For example, coal *in situ* is capable of comparatively easy admeasurement, and hence is better adapted than oil or gas to valuation under the general property tax system where it was permitted for practical convenience to remain. Likewise as to the ores of less frequent occurrence in Oklahoma and whose extraction is attended with greater hazard, a lower tax rate was applied, perhaps from considerations of a policy in taxation, which states may undoubtedly adopt.

The Kennedy bill, c. 148 of acts of 29th Leg., Tex. (1905) was construed by the court of civil appeals in 1907; *Producers' Oil Co.*

[1] Affirmed by Pennsylvania supreme court, 118 Atl. 394, and by the United States Supreme Court, November 27, 1922.

v. *Stephens,* 44 Tex. Civ. Ap. 327; 99 S. W. 157. In defining the tax as an occupation rather than a property tax, the court said:

> "In our opinion, the tax is not upon the gross products of the oil wells, but upon the occupation of owning, controlling, or managing oil wells producing oil; and the amount of tax is measured by a percentage of the market value of the gross products. . . . It does not constitute double taxation, not permitted by the law, as it is within the authority of the Legislature to impose an *ad valorem* tax on the oil-producing property of appellants, and an occupation tax for the use of this property in the production of oil."

In this view the supreme court concurred, as evidenced by its refusal of a writ of error in that case, and by its express approval of the doctrine in deciding a few weeks later *Texas Co.* v. *Stephens,* 100 Tex. 628; 103 S. W. 481, wherein at page 629 it is said:

> "The taxes in the act are levied because the persons specified are engaged in particular, defined businesses, and are laid upon the carrying on of those businesses. . . . Had the statute simply defined the businesses and imposed a tax of a fixed sum upon each, no one would have questioned that it was a tax upon the doing of the businesses; in other words, an occupation tax. The fact that the amount of the tax is to be determined in prescribed methods from the value, or extent, or magnitude of the businesses done, cannot convert it into an *ad valorem* tax upon the property of the persons conducting them."

On appeal to the Supreme Court of the United States of a companion case, challenging the validity of the law, the decision of the state supreme court (*Southwestern Oil Co.* v. *State,* 100 Tex. 647; 103 S. W. 489) was duly affirmed by the United States Supreme Court. Mr. Justice Harlan, in the opinion (217 U. S. 114, 120; 54 L. ed. 688; 30 S. C. 496) said:

> "The tax in question is an occupation tax only. . . . The tax was imposed by the legislature, charged with the duty of providing the means necessary for the support of the state government. That branch of the state government alone could declare what taxes should be imposed and upon whom or upon what kinds of business imposed. . . .
>
> But it is contended that the statute contravenes the Fourteenth Amendment. . . . This position is based mainly on the ground that the statute by imposing a tax on *wholesale* dealers in coal oil, naphtha, benzine, mineral oils refined from petroleum . . . while omitting to put any such tax whatever on wholesale dealers in other articles of merchandise—such, for

instance, as sugar, bacon, coal and iron — so discriminates against wholesale dealers in the several articles specified in § 9 as to deny them the equal protection of the laws."

The value of mining property, according to a mining engineer of repute,[2] is not to be estimated by the amount of the dividends it may be paying at any particular time, but by the number and present value of the dividends it may be able to pay in the future.

Dr. H. L. Smyth of the Harvard chair of mining and metallurgy, in American mining congress proceedings, 1913, p. 29, cites the Michigan experience as confirming the applicability of the general property tax. He says: "The fundamental trouble is the fact that the valuations of mining property made by local assessors are generally not made on any uniform basis and that these valuations cannot be equalized by the ordinary Boards of Equalization with the valuations of other forms of property in the state."

Professor Smyth goes on to speak of the long experience in Michigan with specific taxes on the mining industry, beginning as early as 1853 with a tonnage tax of ten cents on iron ore, reduced in 1872 to three cents and in 1873 to one cent, and abandoned altogether in 1891; saying:

> "We then went back to the *ad valorem* system with valuations made by the local assessor under the General Property Tax Law. Conditions are perhaps somewhat peculiar in Michigan because there is a great preponderance of mining property in the Upper Peninsula and of other forms of taxable property as well as of political power in the Lower Peninsula. This, together with exaggerated notions on the part of the ignorant as to the profits made in mining, inevitably led to the general belief that mining property was undervalued, and caused the Legislature in 1911 to give the State Board of Tax Commissioners authority to value all the mines of Michigan.
>
> "Acting for the Board, this valuation was made by Mr. Finlay of New York in the early summer of 1911. The principle and method of this valuation have provoked wide discussion. . . .
>
> "Mr. Finlay's principle was to capitalize the net profits expected on an annuity basis. He first determined the probable annual net profits and the probable life of the mine. Part of the annual net profits he treated as income. The capital sum which at five per cent would yield that income was the value of the mine. The division of the annual net profits into these two parts was made by a well-known algebraic procedure followed by actuaries in solving similar problems.

[2] R. H. Stretch, *Prospecting, Locating and Valuing Mines*, 11th ed., 1909, p. 20.

"In order to determine annual profits it is necessary to know the cost per ton, the selling price per ton, and the tonnage that will be annually produced. In order to know the life of the mine, it is also necessary to know the total tonnage that the mine will produce.

"These four factors are more or less matters of fact which are capable of being more or less closely approximated from past experience or by physical examination in the case of each mine. In addition, there are two other factors in the Finlay valuation, namely the rates of interest and these were assumed.

"The general result of the Finlay valuation was greatly to increase the valuations of the iron mines. . . . The main criticism of the Finlay valuation has been directed against his assumption that a reasonable return on a mining investment is 5%. It is hardly necessary to say that this figure is absurd. . . ."

The Michigan tax commission had taken some account of these criticisms, by making a general reduction of 10% and 5% from the Finlay total, also by raising the interest rate to 6%, but Prof. Smyth contends that the proper rate is not less than 10%. He adds in conclusion:

"An experience of three years has, I think, convinced the operators of Michigan that with due care in the determination of the factors the Finlay method is well adapted to determining the value of iron mining property, and that it will give more equitable results, not only as between the mines themselves but as between them and other forms of property, than any other."

The great merit from their point of view is that it affords a satisfactory method of keeping the mines under the general property tax law. The alternative is the tonnage tax, and to that they seem unalterably opposed.

Mr. R. C. Allen, state geologist, Lansing, Mich., in the proceedings of the 17th annual session of the American Mining Congress, said (pp. 35 *et seq.*), in referring to the report of the Committee on Mine Taxation (pp. 27 to 33):

"In Michigan the general property tax extends to mines, and we are required to assess mines on the full *ad valorem* value, which is defined in law as the exchange value or sale value. . . .

"It has also resulted in a much better spirit between the mining interests and the rest of the people, because the publicity given to the methods of mine valuation has amounted to a campaign of education. To the farmer, for instance, has been brought some of the important facts concerning the min-

ing industry; these have carried conviction that the industrial difficulties in the mining communities are of the same order as those which prevail among the farmers; and with this interchange of ideas there has grown up something like an era of good feeling. . . .

"We do not believe that the *ad valorem* is a perfect tax, but it has more nearly met the conditions in Michigan than any other tax we have ever had, and we have had some experience with the specific tax. . . .

"Mines are valued for purposes of sale; they are valued as a basis for expenditure in plant installation; they are valued as a basis for marketing of stocks and bonds, and for other commercial purposes. In fact the chief business of a great many expert professional men in this country is the rendering of these valuations.

"These experts will admit that they are quite competent to go out and examine a property, no matter what state of development it is in, and advise the client as to its value for purposes of investment. Then why refuse to recommend such valuation for purposes of taxation?

"Now, gentlemen, let us lay hold of this fact—whatever a property is worth for commercial purpose it is also worth for purposes of taxation. That is the underlying principle of the *ad valorem* system of mine taxation. The valuation of a mine for taxation is merely the best possible estimate of what that property is worth in the market in the condition in which it is found on the day of the appraisal. . . ."

10. *Forests as natural resources*

Our rapidly diminishing forests afford a peculiar example of the necessity for scientific classification of natural resources as subjects of taxation. The field, as a source of public funds, has been even less explored than mining. When we consider that it takes from 30 to 50 or 100 years or more to grow a crop of merchantable trees, it does not seem appropriate to classify the slow maturing timber crop with agricultural crops, annually harvested.

Moreover, when we consider that many of the large timber stands at present held under private ownership are matured and virgin—the original bounty of nature and not the product of voluntary cultivation — the conviction is irresistible that the original owners of these virgin forests should be treated with at least no greater leniency from a taxation standpoint than is due those timber owners who have purchased such properties for value received at the current advanced market.

Lumbering comes next to agriculture among the basic industries of the United States. In 1917, according to an official report (No.

114) of the Forest Service of the United States department of agriculture, the industry was represented by an investment of nearly two and a half billion dollars and by the employment of nearly a million men.

According to that document, the most common industrial unit of the lumber industry combines the ownership of timber with logging and milling operations. On the other hand, vast areas of stumpage are owned by individuals or companies, whose economic function is limited largely to holding the raw material and selling it from time to time to loggers or manufacturers. Speculators in quantities of public timber cheaply acquired, and the push of sudden development have carried timber values very high; indeed to a point presenting abnormal conditions puzzling to a resident of New England or Pennsylvania, where forest properties have been relatively stable.

From the same official source (p. 16) we glean the following facts:

> "The tax burden varies greatly in different forest regions. In the South as a whole it has never been a serious factor. The yearly taxes on large southern pine holdings vary enormously but appear to average about 1.7 cents per thousand feet, or from three-tenths to five-tenths of 1 per cent of their value."

Compare this low ratio with the average tax of one to two per cent of true value paid on all property, and the under-assessment of timber, at one-fourth its real value, is readily shown. A hundred thousand dollars worth of timber stands on the tax books to yield $400; while the same value of other property in general pays $1600.

The report continues:

> "Timber land taxes in various California counties average about 5 mills per thousand feet. . . . The rate in the Inland Empire averages about 1.7 cents per thousand feet. These yearly levies are equivalent to from one-third to 1 per cent of the present value of timberlands."

And the report contains the following interesting conclusion, confirming our indictment against prevalent haphazard methods:

> "It is improbable that the general property tax system levies upon timberlands more than their just share of local revenue over any considerable forest areas. Unsuited by nature to this form of wealth, however, it tends toward heavier taxes than a sound forest industry can bear. Uncertainty as to the future extent of this burden is a menace to the stability of timber ownership."

Much has been said and written of late to show the peculiar character of forest property, as calling for special classification. It, it is pointed out, the uniform general property tax rate is applied upon standing timber at actual value, this annual burden of "taxes prepaid in advance of income may easily absorb from fifty to one hundred per cent of the stumpage value of the timber at the time of cutting." [3] This stage is assumed to be in the remote future, upon the arrival of the stand at the degree of maturity most favorable to its commercial utilization.

But, as graphically demonstrated by a monograph on "The Cost of Growing Timber," by the well-known authorities on lumber, R. S. Kellogg, and E. A. Ziegler, of the Pennsylvania state forest academy, published by the *American Lumberman*, Chicago, in 1911, annual taxes, at the assumed average rate of one per cent of actual value (which according to the government report, heretofore cited, is more than twice what the average forest pays), are a minor factor in the economic cost. Other items—land and stocking, administration and protection, and especially interest on the capital—make up from two-thirds to three-fourths of the final cost.

The problem to be solved, therefore, is practical rather than theoretical. The vast bulk of existing timber holdings are virgin or original growth, as against cultivated or reforested areas. The great plan needed, then, is one which will fit our fiscal formula to forest properties of enormous present value. The equivalent in other fields of industry enjoys no such quasi-exemptions as are proposed by advocates of special classification of natural resources of this species.

The property tax is an existing fact — a condition and not a theory. With the development of our multitudinous interests, a more elastic policy will doubtless be evolved, but in too hastily seizing altruistic principles for the benefit of posterity, we may overlook a more pressing duty toward society of today. To equate present burdens, to offset inequalities, which promote the unlawful gain of the few, is the social task of the hour.

The private ownership in many states of large bodies of matured timber, costing but little to produce, yet constituting taxable property, seems indeed a serious "obstacle", in the judgment of expert foresters, such as Dr. Herman H. Chapman, to the adoption of a long-sighted transitional program of reform which he so admirably sketched last year at the Bretton Woods conference. Truly, as this authority declares, "a gulf intervenes between the recognition of these general principles and their application in practice a gulf intervenes which has so far not been successfully bridged."

[3] Prof. H. H. Chapman, in Proc. 14th conference National Tax Association, p. 39.

Exceptional instances are the general forest conservation law of Louisiana (Act No. 232 of 1920).

Revaluation is then desirable, whether forest properties are to remain *in statu quo* or to be subjected to new treatment. Automatic adjustment or merger of property tax and yield tax upon severance, allowing credit at that stage, for previous annual payments, through interest-bearing certificate of indebtedness, is a practical plan proposed by Mr. L. S. Murphy of the Forest Service.

We shall not be "out of the woods," speaking literally as well as metaphorically, until that ideal point is reached—a consummation unhappily as yet quite remote. In the meantime, while striving constantly for approved reform in procedure under constitutional amendment, due effort should be made toward uniformity under present conditions.

Commercial cruises, such as the government employs in the forest reserves and the state of Washington and Louisiana have found practicable and effective, may achieve the double benefit of smoothing out accumulated inequalities and paving the way for sound economic reform.

Conclusions

Our examination of systems now in vogue for the taxation of natural resources is far from exhaustive and satisfactory; but even a cursory review of the statutes and practices in the various sections of the country disclose certain elements of strength and many points of weakness.

Our tentative conclusions from the study are:

1. Natural resources, because of their ancient origin and social importance, are largely a common heritage of the race; and because they are a wasting, non-reproducible asset, their gradual depletion works an irreparable loss. Hence, in the ascertainment of the peculiar and often hidden values of this species of property, modern scientific research and assistance is requisite, and to that end the periodic appraisal of all privately owned natural resources by competent, expert and disinterested appraisers and engineers is earnestly recommended.

2. The *ad valorem* system, under a constitution permitting classification of subjects, while not wholly adequate in the case of many ores and precious stones and exceptional classes of natural deposits, is an indispensable feature of fair taxation of the major mining properties, such as coal, iron, copper, zinc and bauxite, and of all non-operating mines.

3. The *ad valorem* system, modified and varied to avoid the undue burdening of cultivated timber and reforestation projects, is also a desirable method of taxing virgin and matured timber or timbered lands.

4. The severance tax and kindred exactions is an unexcelled method for taxing developed oil and gas properties and mines engaged in the extraction of precious stones and ores not readily susceptible of admeasurement *in situ*, though it is doubtful whether it should ever be the exclusive tax. Aside from the classes here referred to, the severance or output tax, if employed at all, should be merely nominal and supplemental.

5. No severance tax, as a revenue measure, should be imposed from motives of conservation merely; but this worthy policy should be worked out through other legislative channels.

CHAIRMAN MCKENZIE: Mr. L. S. Murphy of the United States forest service, department of agriculture, has been compelled to leave, and he has left a paper of three pages, with the request that it be read at the end of Mr. Vaughan's report. What is the pleasure of the conference?

C. P. LINK of Colorado: I move that we hear the paper.

(Motion seconded)

CHAIRMAN MCKENZIE: You have heard the motion; is there any discussion?

(No response)

(Ayes and noes)

(Motion carried)

SECRETARY HOLCOMB: (Reads the following paper by Mr. Murphy)

STATEMENT OF L. S. MURPHY, U. S. FOREST SERVICE, CONCERNING SENATOR VAUGHAN'S PROPOSAL TO LEVY A SEVERANCE TAX UPON ALL NATURAL RESOURCES

If I understand Senator Vaughan's proposal correctly it is that he would levy, in addition to property and all other ordinary taxes, a super-tax upon natural resources at the time of their severance from the soil, in order that the public may get the benefit of the unearned increment accruing especially to owners of such property. It is not my purpose to discuss the merits or otherwise of such a tax, as a general proposition. I should, however, like to call attention to the need for properly safeguarding the levy of such a tax, where it is made to include standing timber.

It is extremely difficult, if not impossible, to draw the line between forests as a natural resource and forests as a crop. The one may merge almost imperceptibly into the other, particularly when

certain methods of cutting are employed. You are doubtless aware that the trees growing in the virgin forest vary considerably in size, from the smallest to the largest, even where all of the trees may be of marketable size. Let us say that the smallest sized tree that it would pay the lumbermen to take out under a given set of circumstances would be one containing twenty-five feet, board measure, whereas the average sized tree with which it was associated would run from 130 to 150 bd. ft. The difference in size would not indicate necessarily any great difference in age between the smaller and larger sized trees, but merely that the smaller had been at a disadvantage in securing enough growing space to enable it to develop normally. On the other hand, it is characteristic of much of this small sized timber that when some of the surrounding trees are removed, giving it more light and growing space, it will, notwithstanding its advanced age, start in and grow at a normal rate and ultimately attain a normal average size. Accordingly, it is good forestry practice, where circumstances will permit, for the lumberman to leave these smaller sized trees standing, when making a first cut in a virgin forest, because after a period of fifteen to twenty-five years, they can come back and make a second cut, gaining the advantage from the growth which has taken place in the meantime.

It must be understood that whenever this practice is employed it necessitates what amounts to an investment in forestry on the part of the timber land owner. This investment consists, (1) in the added cost incident to lumbering by this method, taking care to avoid injury to the trees which are to be left; (2) in foregoing a present income, which might be derived through cutting and utilizing the smaller timber as well as the larger trees; (3) in the risk involved, in that the trees which are allowed to remain standing are subjected to danger of destruction by fire, windstorm and the like.

Suppose now the severance tax, which Senator Vaughan is proposing, should be applied to standing virgin timber, without any limitations. The timber land owner about to cut his virgin forest will be confronted with this situation: if he cuts it according to forestry methods, leaving the smaller timber to grow, when he comes to cut the remainder of what originally constituted his virgin forest, assuming the 25 bd. ft. tree grows sixfold in size, to 150 bd. ft., he will be obliged to pay a sixfold greater tax on this portion of his forest than would be the case if he should strip the land clean in the first place. There is little doubt but that the average timber land owner, confronted by such a situation, would elect to strip his land at the first cut. This would not only be poor policy for the lumberman himself, but it would be poor policy for the state to impose a tax burden making such action a logical alternative.

If this super-tax on natural resources is to be resorted to in the case of timber, the undesirable effects which have just been indicated might be avoided by providing that only the product of the first cutting on virgin forest tracts be subjected to this special severance tax. Under these circumstances the timber land owner would immediately consider the possibility of leaving a considerable amount of the smaller timber for the second cutting, thus avoiding the severance tax upon it. It would hardly be possible for him to make such a light cut as to leave any considerable amount of large timber for the second cut. In any operation, to be profitable, it is necessary to take out at least a certain amount of product.

However, if it should be felt that this modification would enable the timber land owner to gain too much of an advantage of exemption, it might be provided in addition that at the time of making the first cut the amount of the then merchantable timber allowed to remain standing be determined and that the natural resource tax be made to apply to that amount of the second cut when harvested. With such modifications the obstacle which the proposed type of tax would interpose to forest conservation would be effectively removed.

It might be well to note that the State of Louisiana already imposes this type of tax upon forests, as well as upon the other natural resources of the state. When the imposition of this tax was originally considered the timber land owners submitted to its enactment without a great deal of opposition, the understanding being, as I recall it, that the funds realized from such a tax would be used by the state to provide forest fire protection and other needed forestry facilities, from which the timber land owners would obviously benefit. This original understanding between the timber land owners of the state, however, has not been lived up to. Only a small portion of the money raised from timber is utilized for the purpose indicated, the remainder being covered into the general funds of the state treasury and utilized for a variety of purposes.

Since the Louisiana law was originally enacted several of the southern states which were without state forestry organizations of any sort have endeavored to utilize the so-called "severance tax" as a means of raising the necessary funds with which to carry on forestry activities, without drawing on the general funds of the state. These different proposals thus far have been consistently and effectively opposed by the lumbermen in the respective states. They have feared that this was merely an entering wedge, as was the case in Louisiana, and that eventually the amount of tax would be increased and utilized for geenral purposes.

Any resort to the use of the severance tax consequently as a general revenue measure should at least aim to safeguard the in-

terests of forest conservation by definitely limiting its application in some such manner as has already been indicated. Such limitation is unquestionably necessary to avoid imposing upon the forests a greater burden than that imposed on other natural resources.

CHAIRMAN MCKENZIE: The topic is now open for discussion.

T. O. MCGRATH of Arizona: I made several notes in listening to Mr. Vaughan's talk, of certain points which he did not bring out, and I should like to cover them.

In speaking of the natural resources, I wish to eliminate the forests and all mines except metal mines, because the large deposits of iron in the mines of Minnesota are in a class by themselves, and also the anthracite and bituminous mines are in a class by themselves. So far as the metal mines are concerned, in increasing the tax—not saying that some mines are now overtaxed—you are liable to develop the same thing as has been mentioned in connection with forests, the tax reaching such proportion that where the profit from the mines is small, the tendency will be to grab what is in sight and deplete the mines in a very short time, and fail to develop further the natural resources of the country. As an illustration, take Arizona; thirty years ago in Arizona, smelting ores averaged ten per cent and over; milling ores averaged six per cent and over. Nothing else was mined; no ores below that, if they were smelting ores. In other words, certain ores could not be milled in those days. Oxide ores could not be milled. If they were lower than ten per cent, they were put in for filling. If the ores were sulphides, they could be mined down to six per cent. Anything below six per cent, if it was sulphide, went in the "garb." That was the condition of the mines for a number of years. It was impracticable under the conditions in Arizona in those days to develop those mines at a profit, even without taxation of any kind, and the mines in that territory were practically untaxed. There were no cities; the county organizations were small; there was no state tax, very little county, and no city tax. Still, everything under ten per cent for carbon or oxide went to "garb", and everything under six per cent for sulphide went to "garb". Ores lower than those grades were not even touched.

However, these higher grade ores were profitable. They made large profits, made many men rich. It required the hardest prospecting; the building of roads and railroads; fighting Indians, and other things, to develop those high-grade mines. In developing them, railroads were built; roads were built; villages were built; men were brought in, which made it cheaper to mine and transport, and as the higher grade mines were depleted, the question came up, how to work these lower grade ores. Then men were put to work studying the problem; money was expended in experimentation,

which could be done by reason of the large profits. Today, in Arizona, smelting ores as low as three per cent are mined and smelted, and milling ores as low as one per cent are mined and sent to the mill. That was possible because in the early days there was little or no taxation of mines. Prospectors were willing to go out in the hills and prospect all summer and winter, in order to make a piece of money. There were lots of men dumped into the districts; the chances were great, and if discovery was made, the profits were large.

At the present time in Arizona we have one of the highest tax systems in any metal mining state probably, with the possible exception of Minnesota. The profits from the mines are small. There are no great mines left in Arizona; that is, if there are you cannot see them. If there are any great mines there, they will have to be developed by deep shafts, with large expenditures and expert talent, which requires large salaries. Of low-grade mines, none are left in Arizona. The last low-grade mine was developed in the last few years, and this deposit of low grade carbon ore had been known from the earliest history of Arizona, as one of the first mines opened in Arizona. Numerous men tried to work it. Some of the mining companies in the United States spent hundreds of thousands of dollars to develop a process whereby this ore could be treated. It was given up and about 1910 another concern tackled it. It was a metallurgical proposition. It could not be smelted, or milled, and the only thing to do was to leach it, but how to leach it and how to turn it out as metal—copper—considering the amount of money required, was a very great problem. It required millions of dollars, even if they succeeded. The amount of energy and money necessary to develop that was so large that very few tackled it; but one concern did tackle it, and today that property is producing at the rate of fifty millions a year, and will add at least probably one-half billion in wealth to this country, due to the fact that it was able to lay by a surplus to carry on that operation.

I think there is a gentleman here representing the Utah Copper Company, and I think he can explain to you that the Utah Copper Company's great wealth did not come by any grafting of resources. It would probably be interesting, if the gentlemen care to hear him.

CHAIRMAN MCKENZIE: Is there any further discussion?

A. G. MACKENZIE of Utah: I am not the gentleman Mr. McGrath referred to. The Utah Copper has a direct representative here, but he has asked me to speak for his company as well as the others on this proposition. George Vaughan's paper may have given you a misconception about the situation of the Utah Copper in that the Utah Copper and its associate companies are the development of a resource rather than the exhaustion of one. In bringing that mine

to its present eminence, they developed a new metallurgy. I know something of it. I was over there when it was a cow pasture; I was in it when it was an underground mine; I know something about the proposition. They take ore which is only running one and one-half per cent copper, and reclaim enough of it to make the mine commercially profitable, through handling an enormous tonnage. But for the perseverance, the imagination and the courage of those men, risking not only their money and their friends' money, but their own professional reputations, that mine would still be a cow pasture; so I think it should be acknowledged as an achievement rather than the exhaustion of any wealth of the state.

In connection with that same property, Mr. Vaughan mentioned a fluctuation in its valuation for taxation. The tax is a composite of a tax on actual valuation—true value of ground and machinery—and a tax on net proceeds of the property. Any company's business—a merchandise business, a farm business or any other business — would show a like fluctuation under any system of fair taxation known, had such business been in the condition that the business of the Utah Copper was in at the periods indicated. He took the year 1916, the peak of prosperity for the copper company, and compared it with the last year or two, for one year of which the mine was shut down completely, and for a year prior to which it was in only partial operation. If any other business, as I say, was in that condition, it would have shown a like fluctuation.

Another thing that came to my mind: Judge Vaughan alluded to Mr. Finlay, whose name of course we all know in the mining business, and whom some of us know personally. I think it should be observed at this time that Mr. Finlay has been known in recent years chiefly as a representative of tax collectors rather than of mining people, and I think perhaps his appraisals should be regarded not so much as judicial but as made for the purpose which they accomplish, of increasing the assessed valuation of mining properties, and in that his surveys were very successful. I could amplify some of the things Mr. McGrath said, but they are well known to you. I am not sure that some of you men in other states understand the process of making a Western mine. I can give you some personal history, because I know the facts. I paid fourteen separate assessments on one property out there before we got to shipping ore, and last October we started to ship.

I am interested in another property which we call our new bonanza property there. I am not a heavy stockholder. It is now one of the principal silver-producing mines in the United States. We were twelve years getting the ground together and working that property before we shipped a ton of ore. That represented twelve years of waiting; twelve years of more or less sacrifice of investment, and I think you will concede that in the making of a

mine there are some substantial differences from building up other businesses, and that any system of taxation, to be fair, must recognize that condition as applied to mining. I thank you.

CHAIRMAN MCKENZIE: Mr. Secretary, that seems to be all the discussion on the taxation of natural resources. Is there anything further to come before us?

(No response)

JOHN E. BRINDLEY: I move we adjourn.

(Motion seconded)

(Adjournment)

ELEVENTH SESSION

Friday Morning, September 22, 1922

Chairman Lord: The conference will be in order.

To expedite matters somewhat, we have thought it advisable to have the resolutions adopted by the committee on resolutions read at this time, but discussion and action will be deferred until two o'clock this afternoon. At two o'clock the resolutions will be brought up for final consideration.

Now, I dislike to make the suggestion that discussion be as brief and as much to the point as possible on these resolutions when they come up for final action this afternoon, but in order to adjourn the conference and association this afternoon, it will be necessary for everyone to be limited in his remarks.

C. J. Tobin: May I ask a question? Will it be the first order of business at the afternoon session?

Chairman Lord: The first order of business at the afternoon session will be the consideration of the resolutions, and the final action of the conference on them.

(Resolutions as adopted by the committee on resolutions read)

Chairman Lord: Are there any announcements, local or otherwise?

(Announcement of luncheon by the Rotary Club at the Radisson Hotel)

Chairman Lord: Gentlemen of the conference, we are very fortunate indeed in having with us at this conference an ex-governor of one of our southwestern states, who has given much study and attention to the problems which will be under discussion this morning, especially limitations on expenditures and taxes, and I am going to ask him to preside at the meeting this morning. I have pleasure in introducing to you ex-governor Hagerman of New Mexico.

H. J. Hagerman: Gentlemen of the conference: I am sure that the representatives of New Mexico feel very highly honored in having one of their number asked to preside at a session of this conference. New Mexico is one of the youngest and, I think, one of the poorest states in the Union, but from the experience of the

last eight or ten years I think our state has had samples of every kind of economic and tax and revenue problem to solve, and while quantatively they are very small, as compared with the older states, we have done a good deal towards solving them.

We have had a state taxpayers' association actively engaged in these problems for the last eight years, and three years ago the legislature appointed a special revenue commission, which went into all of these matters, and adopted a report which was acted upon by the last legislature. Many of the same conditions which seem to exist in the older states we have found to exist, especially the condition that our governmental expenditures are very rapidly exceeding our receipts. I think the spread between the two in our state is probably greater than in many of the Eastern states, and being a poorer community, it is harder for the taxpayers who have to pay the taxes to meet the burden.

I do wish to say that we all highly appreciate the great work that this association has done, and in many of the problems that we have already solved there, notably in mine taxation, we have been very greatly benefited by the deliberations of this conference.

I think throughout the West there has been considerable prejudice against commissions and experts, but the more we study these problems, the more we are convinced that it is only through the help of men who really know their business that we can find real solutions to these matters. We were fortunate in New Mexico in securing the help of Professor Haig, who was here yesterday, and later of Mr. Ralph Finlay, who is generally acknowledged as the greatest expert and authority on mine valuation in the country. We had a controversy over the taxation of mines which threatened to disrupt the state politically and every other way. Finally the matter was settled, and I think settled in a very reasonable way, satisfactory to all parties, and it has been definitely and clearly taken out of politics.

The day's discussion is in connection with limitations on public expenditures, and the outline as included in the program is so comprehensive that I think it will be open to almost any phase of discussion.

I am sorry that Professor Haig is not here. He has given this matter a great deal of attention, and he hoped to be here today to participate in the discussion, but he was unavoidably called back. He handed me a memorandum, part of which I will briefly read, which I think will help the delegates in concentrating on the subject in hand. In this brief memorandum he says:

> "In my opinion the proposed committee on expenditures should approach the problem from a very broad point of view. A mere howl of protest about the amounts being spent will not

get us far beyond merely arousing an interest in the importance of the problem. The only fundamental solution of the problem lies in devising methods for securing really intelligent decisions regarding what the community desires to spend collectively out of the limited economic resources available, and methods of securing efficiency in the administration of public affairs. Such a committee would perform a real service if it could (1) direct public attention to the limitations—political and economic—which apply, and (2) give an authoritative pronouncement of the worth, in the light of American and foreign experience, of the various devices—administrative, political and legal—for making sure that the electorate decides intelligently and wisely what to spend collectively and is assured of getting what it pays for.

Such a program would lead immediately to the consideration of a great number of specific problems, the fiscal aspects of which the association can with perfect propriety discuss. Some of these would be:

(1) The quality of public administration and methods of improvement, including civil service reform, and the reorganization of the structure of government to secure a more businesslike distribution of functions — the adoption of modern budgetary procedure, etc.

(2) The quality of the political organization, from the point of view of its efficiency in meeting the financial problem. How can intelligent mandates on financial questions be secured from the electorate? Should mandates be specific or "blanket" in character. Methods of supplying the electorate with facts necessary to intelligent decisions — what are the fiscal implications of "the separate financing of schools" etc.?

(3) The quality of the legal structure, including the tax system itself, from the point of view of its consequences with respect to expenditures. What is the truth regarding the effectiveness and desirability of tax and debt limitations under American conditions? Is the tax system so organized as to assist the electorate in making intelligent fiscal decisions on the basis of economic costs and benefits, in giving a definite notion of *burden* involved?"

I believe there is a strong feeling throughout the country that many of the problems connected with the machinery of taxation which are presented to the federal government and state governments could more easily be solved if the actual burden of taxation were not so great. Those of us who in one way or another come in contact with taxpayers and legislators find that we often run up against the difficulty presented by the fact that the burdens

are so great that many of our principal citizens and legislators feel that it does not matter very much what measures are resorted to in the legislatures as long as taxes are so high.

Bearing these points in mind, I will now ask a few gentlemen who have made a particular study of this matter to talk, and then open it to a round table discussion. Mr. Zoercher of Indiana, we shall be pleased to hear from you.

PHILIP ZOERCHER of Indiana: Mr. Chairman and gent'emen of the conference: Those of you who have been following the work in the state of Indiana remember that in 1919 Indiana had a new tax law. When this tax law was framed, the question of tax control or the control of expenditures was considered. We had before us a recommendation, made by a special commission that had been appointed by the governor in 1915, which advocated the limitation of tax rates. We remembered that our neighboring state, Ohio, had what was known as the Smith one per cent law. We got in touch with the Ohio commission, and other authorities on the question of taxation there, and they advised us against the Smith law and against adopting the principles of that law. We realized that if the property in the State of Indiana was to be assessed at its true and full cash value, something had to be done in the way of limiting expenses. The old law had the full value provision in it, but property was being assessed all the way from ten cents on the dollar to full value, and the average in the state was about 33⅓%, but we had enough machinery in the new law so that we could bring about a full value.

One section of the new law provided that no more taxes should be collected than in the preceding year, but if any taxing unit was in need of revenue which would bring the total tax rate for all purposes in excess of $1.50 on the $100, the taxing officers were authorized to file a petition with the state board, and on a showing that board could then fix the levy. There was, however, another provision that the state board, on its own initiative, could examine into the tax levy and the amount of money proposed to be collected by any taxing unit, and if we found that they were proposing to collect more money than government economically administered would warrant, we had the right to reduce the levy to such an amount as we thought they ought to get along with.

There was another provision that as the valuations went up all fixed levies would be automatically reduced, so that the state rate, which was 45.5 cents on $100, under the new valuation was automatically reduced to eighteen cents on the $100.

There was another provision that if the officers of any municipal corporation in the state desired to issue any bonds or certificates of indebtedness, they were required to file a petition with the state board and get the consent of that board, before such bonds or

certificates of indebtedness could be issued. You can readily see that with these two provisions we had absolute control of expenditures in the state of Indiana. The total valuation in the last year of the old law was two and one-quarter billions; the total value last year, under the new law, was five and three-quarter billions. Now then, if you will look at the state revenues—if anybody wants the figures, I have the figures with me—you will see that as far as the state taxes were concerned, absolute faith was kept. As far as local levies are concerned, if we had passed the levies as they were fixd by the local officers, there would have been an enormous increase; in other words, they would have raised over $11,000,000 of taxes, but we greatly reduced them.

As to the suggestion made by Dr. Adams yesterday, that during the war, schools and possibly some improvements were not made, we were compelled to and did grant an increase in the total revenue in the state of about $7,000,000, mostly for local taxes and most of that was for schools. We also approved a good many bond issues for school purposes.

Now then, what did the local units do? We made one mistake, when it was provided that all hearings should be held at Indianapolis, but at the beginning of the year 1920 we corrected that mistake by adopting a set of rules providing that all hearings on bond issues should be held in the locality, and also provided that a budget must be prepared. We had no budget law at that time, but one section of the tax law provided that where a power was given, and there was no provision in the law as to how the power should be exercised, the state board had the right to adopt rules and regulations to carry out that power; therefore we adopted rules requiring the publication of a budget before the next levy was to be made. This check on expenditures and on tax levies enraged the contractors and the fellows who wanted to get their hands in the public treasury for the reckless expenditure of money, and the cry was raised that a board of three, sitting in Indianapolis, were dictating how much tax should be collected, and some small peanut politics were mixed in with it to create a sentiment in the state of Indiana. We had also a very unfortunate decision of the supreme court in reference to horizontal increases that had been made, which required the calling of a special session of the legislature in July, 1920. In July, 1920, that special session of the legislature repealed that section of our tax law that provided that no more should be collected than in the preceding year, and that all levies should be automatically reduced as the valuation went up. The power of the state board over levies and over bond issues was taken away. That provision as to tax levies went into effect at once and within thirty days thereafter new levies were made.

There was a provision in the new law, that twenty or more tax-

payers might file a petition with the county auditor who could convene the county council, and that body could review the levies, but in only two counties of the state was this provision of the law taken advantage of by taxpayers.

The first year under the new law there was an increase of between seven and eight millions of dollars, and most of that went to schools, but the next year there was an increase of $36,000,000 over the preceding year as the result of no check. The tax commission then went to the next legislature and reported what the effects of "home rule" were. Although the governor had different ideas in the first place, when he saw the effect he was man enough and big enough to rise and take control of the matter and to see that there was some check placed again.

As to the check we have now in Indiana; we have absolutely no control over levies, unless ten or more taxpayers file a petition with the county auditor, and the provision is that we have a hearing in the locality, and there is the same provision in reference to bond issues. In 1921—the first year that it went in effect—we had forty-six petitions for the review of tax levies. Out of those forty-six, we reduced forty-two. I don't know how many we will have this year, but I think that we will have a great many more. They have until the fourth Monday in September to file their petitions. The law requires the officers to publish a budget and the taxpayers are invited to appear the first week in September, when the taxing officers fix the levies. They have the right to object to any items in the budget, and if the local taxing officials don't cut down the budget to where the taxpayer thinks it ought to be, he has a right to appeal to the state board of review, and the decision of the state board is final.

I believe from a legal standpoint, although the state supreme court held that the state board's right to review bond issues was legal and was constitutional, that there was possibly some question as to whether our right to interfere with local tax levies did not interfere with the right of local self-government, but as we now have it, the law provides that the local taxpayers themselves initiate the machinery that gives us jurisdiction over these levies. We have no right to increase the levies; our only right is to approve or reduce them.

Judge Hough cited one or two instances of saving that were made on account of the power of the board over bond issues. He might have mentioned more. In one southern county they wanted to build a court house in 1919—the first year we had that provision for approving bond issues—and a petition was filed early in the year 1920. They had asked for $250,000 for the new court house. The hearing was held at Petersburg, and after a hearing we felt that $250,000 was more than that county-seat ought to have for a

court house, and we disapproved the bond issue. In our finding we said the amount was excessive, and a petition for rehearing was granted. They asked us then to modify the amount, and we granted $150,000 for the new court house. Before they let the contract, the legislature had taken the power away from the board, and the commissioners down there thought that there was no longer any check on them, and they let the contract, but instead of letting the contract for the building of a new court house within the amount of $150,000, they let a contract for the building of a one-story building, with a temporary roof, for $150,000, but before they could adopt a resolution for the next bond issue, the legislature had again given the state board power, on complaint of ten taxpayers, to interfere, and the matter came before us again, and when it came up again the one-story building was there. We could not then say that they could not have any more than $150,000, because they had begun the building and had spent $150,000 for the building with a temporary roof on it. When we investigated, we found that contracts had been let for the completion of the whole building, amounting to $417,000. We sent for the architect and the contractor, and told them that possibly the doors of the penitentiary ought to be open to somebody; we told those men that the thing had to be modified. They could not reduce the size of the building, because there was one story there, but they had to remove some of the frills and some of the marble schemes, and some of the useless things they had in there, and they finally completed the court house, without reducing the size of it, for $260,000 instead of $417,000. Of course, the contractor may not have liked that kind of supervision or that kind of control in some central board.

Mr. Hough had under his control in Marion County the building of a school house. They had advertised for bids, and had received a bid amounting to $182,800. That was the lowest bid. Mr. Hough sent for the architect and the trustee and said that the board would never grant that. We had an engineer on our staff who had gone over the plans and specifications and he had informed us what he thought the amount ought to be, and we told the architect that we would not approve an amount of that kind. The architect was the same one who had the control of that court house down in Pike County, and I suppose he knew that we meant what we said, and he got busy, and without changing the plans, without doing anything, except to get honest, that contract for the school house was let for $115,000 and we approved bonds for that amount. Invariably now, when applications are made to our board for bond issues, when we finally have had a hearing and feel that a bond issue ought to be granted, we tell the authorities to re-advertise and receive bids, and that if they receive the right kind of bids, we will

approve the bonds. That one check; that one control, has saved millions of dollars in the state of Indiana. I think I have ta ked over my time, but that is the way we handle these matters in our state.

My own political party is going back to some of the errors it made before, and is advocating in its platform a referendum and a limit on the tax rate—the very thing that experts have told us not to place in there; you know what a referendum means.

We had an election on a constitutional amendment for an income tax and for the classification of property, and only fifteen per cent of the voters in the whole state of Indiana participated in that important election; and then you tell me you are going to settle these things at a referendum! You know what will happen. The contractors and the fellows that want to put something over will get enough of their hirelings to help carry an election, and only ten per cent of the people may take part in the election, and then what will happen? They will have had the cost of the election; the cost of campaigning and everything, and the people will pay the bill.

CHAIRMAN HAGERMAN: I am sure the conference would like to hear from Mr. Fernald.

CHARLES J. TOBIN: May I be permitted to make a statement for the record at this point? The conference yesterday was kind enough to say that I might submit and make a part of the record further reference to the issue of bank taxation. I have gone over that in my mind and I fear that that may be a wrong procedure to follow, and while I appreciate very much the kindness and consideration shown me yesterday, when I wished to discuss this particular issue, I prefer to conform to the usual rules and keep to the program, and shall be satisfied to take the usual rephrasing of the remarks I made yesterday, as other speakers are required to do. The only exception I should like to make to that would be to be sure that there will be included the conclusions of the Davenport committee referred to by myself and Professor Haig and Senator Law yesterday. I should like to be certain that those two paragraphs as to the conclusions of the New York committee are included, and with that I shall be content. I appreciate the spirit which was shown yesterday, and yet I want to conform to the usual procedure.

C. P. LINK: This report was partially read yesterday or sketched by the gentleman. Most of us have copies of it, therefore I move you that this privilege be granted, that those parts of the report desired be printed.

C. J. TOBIN: I just wanted to make sure that the things Senator Law and Professor Haig referred to are included.

Mr. H. B. Fernald: What I am going to say is based largely on my experience with the state budget in New Jersey. We have, for five or six years, been working on budgets in that state. We have had the increased demand for expenditures. We have had the increase in expenditures. In the five years that I have been in this work, acting as adviser to the governor, attending the four legislative committees, I only remember one case where anyone appeared at a hearing before the governor or at a hearing before the appropriation committee to object to an increased appropriation, and that one man was the owner of a building which was to be affected, if a larger appropriation was granted for better chambers for the court; he was the only man who appeared to object to the increased appropriation, and then only because it affected his personal interest. Every other person who has appeared before either the governor or the legislature, with reference to appropriations — or woman either—has come there with a request for increased appropriations or with a request that appropriations be not reduced Can we wonder at the constant increase in governmental expenditure under those conditions?

We had the other day some rather warm discussion of this question of extravagance. I don't think we can speak correctly on the question of whether our governments are extravagant, unless we recognize clearly what we mean by extravagance. I may spend on my personal affairs $10,000 a year, and I may see that everything I spend it for I bargain carefully about; that I feel I get value received for each dollar I spend; but yet perhaps if I just cut out a lot I might spend, perhaps without such careful attention to details, only $5,000 a year. Which is the more extravagant, some ill-considered expenditures which only run to a total of $5 000.00 or careful expenditures which run to a total of $10,000? The big question with me personally is, have I the money to spend? If my income is such that I can spend $10,000 on my own affairs, and not reduce my wealth, and go ahead and pile up something as well, for the future, year after year, I don't think that I am doing wrong. If I am only making $6,000, it is plain foolish extravagance for me to go ahead and spend ten. I think that is the condition with our states and our towns.

We go back a few years and the tax burden was not a serious item. We had enough resources, so that if we needed more money we could reach out and place an additional tax on some class. If we put on a tax and it worked hard on one class, we could readily shift it to another. We could put in tax laws that had many imperfections, but they did not weigh heavily on anyone because the rates were low. Those same laws which were not burdensome at low rates, when the rates were made high, produced glaring inequalities; gross unfairness. That is the situation we are in. When

I looked over this program and saw we had ten sessions devoted to raising revenue and one session devoted to the limitation of expenditures, I thought that pretty nearly reflected the popular view, but I was very glad to find right at the first that we started in with the recognition of the necessity of reduction of expenditures if we are going to solve the tax problem. We do need this recognition, and I think that in this body unusual recognition is given to the need for reduction; but so many people, in considering the matter, say, "Yes, we ought to; we ought to; but we cannot; we must progress, we must continue to spend this money."

Now, I want to divide this matter of the limitation of expenditures into two general divisions; one a direct legal limitation, the other an indirect and, what I might call, natural limitation. We follow to a large degree this natural tendency of our people. If anything isn't right, pass a law; if expenditure is running too fast, pass a law and limit it. It is well to pass laws when they are necessary, but do not, in trying to do that, ignore the many natural limitations we have. Those are the things we have been relying on largely in the state of New Jersey. We do have certain limitations, which arise through the separate funds we have, and I am a great believer in that principle. We have a road fund; we have our school fund; we have one or two special funds, such as fish and game. Fish and game licenses go to the fish and game fund, to meet those expenditures.

We all know it is an easy thing to go to the people and say we must spend more money for our schools; we must increase our tax rate; but if we stop to think, we know that if we increase our tax rate for schools, that money goes into the general pot and is a reserve which can be drawn on for general expenditures. When drawn there are more needs for schools or more needs for roads, and again the new tax is for roads or schools.

I am satisfied that we must keep our expenditures as closely identified as possible with the subjects of taxation on which they are to be made. I am also satisfied that we must keep our sources of taxation just as close as we can to our control of expenditures. I think we have made a mistake in the continual shifting from town to county, from county to state, and from state to the federal government, all with the idea that the town gets something that it does not pay for; that the county gets something it does not pay for, but that somebody else pays for. Somebody does pay for it. I think separate funds, with a clear understanding of what they are, and what they are intended for, will accomplish a great deal in limitations.

Another thing is publicity. We need more frankness with our taxpayers as to where the money comes from and how it goes. We often find citizens interested, in the state, trying to get infor-

mation. In some of our states it is not an easy thing to tell anybody just what our financial system is, or where the money comes from, or where it goes. There are very few states which have fiscal laws that are clear. When we try to trace through anything, we find an act to amend an act to amend, and so forth, and we go back and try to follow it out, and our citizens come in sometimes and try to follow the laws through and become discouraged. We don't get the co-operation of public-spirited citizens that we need in these matters. Instead, those who appear before our committees are those who want some more money. We must have more of the co-operation of the body of business men, of the taxpayers of the state, who appreciate the relation between the expenditures and the revenue.

I said that I had been engaged in connection with the governor's budget system. The budget is a fine thing. We can do a lot with a budget, and a good budget is one of the things that we need. I think we have a good budget in New Jersey. I don't know as I would tell any other state to put in just what we have. It is a matter of what you do with your budget. It is an adapting of financial legislation to the conditions in the state — the form of organization. But you cannot say, "We will put in a state budget," and then go home and forget it, because a budget don't run itself. You can have just as great a riot of expenditure with a budget as you can without it. You are not apt to have it; it is a good thing, but it is only one of the means of bringing about the end.

There is another thing in this indirect limitation of expenditures which can accomplish much too. I was reminded of this by the previous speaker; and that is the control through audit. Our appropriation bills read, "we appropriate the following amounts, or so much thereof as is necessary." Now, the controller has a power then to inquire into the necessity. He has not very much power to refuse; to try to disallow; but there are many, many cases where the mere inquiry by the controller into the necessity—the bringing of the matter to the public notice—is all that is necessary to disclose the fact that we don't need to spend $100,000, where we can spend $75,000 and accomplish results. Much good can be accomplished through that.

I want to summarize just this way: I think we must adopt these cardinal points: There should be no new increased taxation unless it is an absolute necessity; we must have frankness with our taxpayers and get their co-operation. To do this, we must have clearness and simplicity in our financial statements; we must have clearness in our financial plans; we must have clearness of our financial laws; we must emphasize the directness of the relation between the money raised and the money spent; we must have clear, sound,

hard, honest thinking on the particular problems that we are faced with, each in our own individual state. Thank you.

CHAIRMAN HAGERMAN: We shall be very glad to hear from Mr. Sutherland of the Civic Federation of Chicago.

DOUGLAS SUTHERLAND of Illinois: Mr. Chairman and gentlemen: I think we are all singing about the same song. In Illinois we have had for many years laws limiting our tax rates. To a certain extent perhaps they have been a benefit to the taxpayer, because our laws classify cities according to population. In some cases it is in the power of the general assembly to so classify them. We have one law which it is supposed was originally intended to scale all rates down to one per cent of the full value, very much after the idea of the Smith law in Ohio; and then in addition to that each taxing body has in its substantive law a maximum rate, but the maximum rates have been advanced, and minimum rates, below which they cannot be reduced, have been put in; the progress of taxation has been upward and the burden has been increasing in Illinois, particularly in Illinois cities, as it has all over the country.

In other words, our experience has been that limitation on a tax rate is not an absolute bulwark upon which the taxpayer can rest secure. We have in addition, particularly in the city of Chicago, a situation which I have no doubt you have in your larger cities, and which you will have as time goes on in increasing amount, namely, the situation in which the public employees are very intensely organized, and their organization is used primarily for the purpose of getting more and more money out of the public treasury, which means inevitably an increase in the tax burden. In other words, our state tax-limit laws, limiting the levies of local bodies, are merely a sort of a trench; a breastwork in the battle between the taxpayer and the public employee, aided and abetted by the contractors that Judge Hough and Judge Zoercher have mentioned; a certain type of politician who assumes that the chief function of a public official is to spend public money; and others of that type, and they get after the public employees and say, "We must have a rate so and so; you go before the council and get a big appropriation, and then go before the legislature."

Another reason that the rate is only a stop-gap is this: The council of a city, the commissioners of a board, or a district, may know that they have a limit beyond which they cannot levy, but they will make appropriations far in excess of any estimated revenue based on such a rate, making the excuse that the valuation for that year will be larger, and then when they run a deficit, as has been the case in the last few years, they go to the legislature and say, "Well, we have spent the money; we have to get it back now;

we must have this increase in tax rate." So that, after all, it seems to me that the limit on the tax rate is only a comparatively weak defense, and we have come to the situation in Illinois where, on behalf of the taxpayer, we are trying to secure some better defense.

I will admit that I am very much interested in the experience of Indiana, to which Judge Hough and Judge Zoercher have at various times called our attention, and that is one of the things that we may urge. Also, this has been suggested: You gain nothing by limiting your tax rate; the whole local battle is on expenditures. Why allow your local taxing body to pass the buck to your general assembly; to your state legislative body, and say, "Well, we didn't make this tax rate; the legislature made it," when, as a matter of fact, they laid the ground for it? Why not levy the tax rate, without state limitation, and hold the local body responsible for the amount of its expenditures, because, after all, the expenditure is what determines the burden of taxation. So there are these two lines of thought. But after all, it seems to me that the whole problem was epitomized by Judge Armson at our opening session, when he said eternal vigilance on the part of the citizens is the price of a reasonable and moderate tax burden. It takes a strong and vigorous and fearless tax commission to properly administer the kind of law that they have in Indiana, and it puts some stress and burden upon them at that; and behind that tax commission there must stand a fearless and vigorous governor. In the larger communities the taxpayer today is not alert as to matters affecting him, whereas the persons who are interested in getting money from the public treasury are very much alert, and are organized, while the taxpayers are not organized. The constant political pressure under that situation, even with a strong governor and a strong tax commission, is going to be towards weakening that defense. And again, if you leave it to "home rule," to local responsibility, while that may be better than passing the buck, unless your taxpayers are alert and as well organized as those interested in the expenditure of public money, you haven't gained anything there.

The whole problem, it seems to me, lies in informing the taxpayer as to the matters affecting him and organizing him for, if you please, his protection, self-defense; and behind that there must be a broadening of the base of direct taxation, so that as many citizens as possible, certainly as many voters as possible, shall feel directly the burden of taxation, and therefore will apply their vote intelligently on that basis.

You have heard the old socialist slogan, that the people must be made "class conscious," with which, of course, we have no sympathy; but I want to tell you that one of the best antidotes for socialism, and one of the best plans for remodeling our citizenship and getting it back to the old basis, that every tub must stand on its

own bottom, and that every American citizen must be dependent upon his own efforts, and not rely upon government, will be a broadening of the base of taxation so that each citizen will feel that he is a part and that he contributes to the government of which he is a part.

Now, that is pretty general, but I think after all that it is going to be the controlling factor in citizenship, and I think that not only must men take that attitude, but that the women of the country also must inform themselves and must vote and share in the pocketbook that pays the taxes, and then we won't have so many women's organizations, led astray by politicians urging sob-stuff legislation, which they think will appeal to the ladies. I thank you.

CHAIRMAN HAGERMAN: Before proceeding with the round table discussion, we should like to have a few words, if possible, from Senator Van Alstine of Iowa, if he is present. Is the Senator here?

H. S. VAN ALSTINE: Mr. Chairman, ladies and gentlemen: We have heard much about the ever-increasing taxes, and I believe Iowa has generously contributed to, and must accept full responsibility for her share of these tax increases. We all like the advantages that accrue to our community from the spending of public money, and as long as money was easy to get, we had little complaint about taxes. But when prosperity is no longer with us then the tax issue looms large. It is an old axiom that nothing but death and taxes are certain. The average citizen is reconciled to the idea that taxes must be paid; but he gives mighty little attention to whence they come or whither they go, until called upon to walk up and pay his tax bill. Then his interest is usually confined to its size, and his action to kicking about it—with his chin.

One of the great difficulties in the taxation problem is to impress upon the people that tax budgets are largely home-made and that the remedy for tax evils must originate in the same place. The economic difficulties that now confront us are multifarious, and our tax burden is not wholly in the official tax budgets. The period of post-war inflation brought us high wages and high prices, permitting individual extravagances, too often accepted as necessities, and which our people are reluctant to forego. The average citizen is now living on a scale of expense that the country has never before seen, and it is doubtful if it can be long maintained. We all know that any expense in the tax budget, whether that tax be collected directly or indirectly, must find its place somewhere, and sometime, in the individual citizen's tax receipt. We also know that when any appreciable number of our people come to regard the luxuries and extravagances of yesterday as the necessities of today, then these things become one of these super-official taxes that the people are imposing upon themselves. Down in our state

many seem to think that I have almost made a fad of the automobile tax. I don't mean the direct tax that is levied by the state, but the super-tax that is levied by the people upon themselves in their efforts to support the cost of the use, or misuse, of the largest number of automobiles per capita in the world. It is said that we have an automobile for every four and one-half people. A gentleman remarked to me a few days ago, that if there was a flood in Iowa, the people could all get into their automobiles and leave the state. If they continue this "autophobia" at the pace they have been going, I am not sure but that the automobiles will automatically take them out of the state of solvency.

I have no grievance against the automobile. It is here to stay. It has and will hold a place in our affairs, as a necessity, a convenience, or a luxury, depending upon the circumstances of the user. But if its misuse becomes a menace to our economic welfare, then we should face the situation squarely. I have been in the banking business for thirty-odd years, and during that time have experienced the financial vicissitudes that come with the periods of inflation and depression, or of the so-called "good times" and "bad times". One did not need to claim the vision of a prophet to foresee that such an orgy of inflation and speculation as we experienced in 1919 and 1920, would, in the ordinary processes of economic law, bring in its wake a period of financial disturbance and business depression. When the financial storm-signals were commencing to appear during the early months of 1920, it was plain to me that all too many of our people had come to regard numerous luxuries as necessities, and that when the day of reckoning came, would be calling on Providence, or the gilded dome down at Washington, or at the state house, for help, and that real help could not come from that direction. While I had no prejudice against the automobile, yet in my analysis of the situation, the cost of its use, or misuse, appeared to be the big leak—the big bung-hole.

In order to arrive at a reasonably correct estimate of cost, I sent out a questionnaire to seventy-five or one hundred people in the state, selecting substantial business people, including farmers, bankers, merchants, automobile dealers, etc., who I thought would give the question careful consideration. The questions were substantially as follows: (1) What is your estimate of the average "life" of an automobile, meaning the length of time that the average automobile is used? (2) What in your opinion was the average cost of new cars during the season of 1920? (3) What in your opinion is the average mileage run per year per car? (4) What in your opinion is the average cost of tires, upkeep, and repairs? (5) What is your opinion of the average gas consumption per mile?

A large percent responded, and it was interesting to observe the substantial uniformity of these estimates. I averaged these replies,

and computed the cost, as represented by the average opinions of these men. The result shows that the average annual cost of operating an automobile, including depreciation, based on the opinion of these gentlemen, was $760.10. In considering these figures we must keep in mind that they represent the cost at the peak price period of inflation. It is chiefly the bills we made in those days that vex us now. I ascertained from the state department the number of automobiles registered. A portion of those registries were trucks and business cars, and at that time our state did not keep a separate list of the trucks. However, prior to taking this up on a state basis, and merely as a matter of personal interest, I had secured data from the county officials of two or three of our local counties, where I was familiar with the conditions, and in making up their reports, the country treasurers segregated the trucks and pleasure cars. Therefore, by basing my estimates on the reports from the county treasurers, I eliminated the same percentage of trucks and business cars from the number of automobiles registered in the state, and multiplied the cost of operating a single car by the total number of cars, and had a total of $311,641,000 as the annual cost of supporting pleasure automobiles in the state of Iowa. I am free to say that when I was making that computation, I had to look twice to see if I had the decimal point in the right place.

A little later in the season, and following the same line of thought that I had used in our local counties, I secured the state weather and crop bureau report, showing the crop production in the state of Iowa. In that year we planted 10,300,000 acres of corn, yielding forty-six bushels per acre—the largest yield per acre we had ever grown—giving a total corn production of 473,800,000 bushels, of a market value of forty-seven cents per bushel, giving a total value of $222,686,000. These crop report figures were issued in December, and the market price at that time was more than the average farmer received for his crop, as the price continued to decline for some time. Subtracting the total value of the corn crop from the automobile bill, we had a deficit of $88,955,000. It was plain we must have some more income, to support our automobiles and hold our record, as first in automobiles per capita.

CHAIRMAN HAGERMAN: The gentleman will have five minutes more.

MR. VAN ALSTINE (continuing): Therefore, I approximated the oat crop in the same manner and found the value to be $86,746,144. After deducting that, we still had a deficit of $6,208,856 necessary to pay our automobile bill. Iowa is pre-eminently an agricultural state, and while we produced a diversity of crops, corn and oats are the two largest.

Now, gentlemen, the automobile bill for that year had absorbed the entire corn crop, without setting aside an ear of corn to feed the cow that gives the baby its milk, or a kernel for next year's seed; it had absorbed the entire oat crop, without reserving a bushel for seed or to feed the horses which must be fed to produce next year's crop, and was still calling for $6,208,856 more. In that year, of 1920, these two crops represented fifty-four per cent of the total value of all crops produced from the soil, but not including livestock products. With all its wealth and all its resources, I don't believe that the state of Iowa can long stand that tax; and I want to say to you that when I first made up these figures I was loath to give them publicity. I was ashamed to admit that the people of the state of Iowa were spending more than the value of their two principal crops on automobiles—a luxury, when compared with such essentials as food, raiment, shelter and education. I do not want to be misunderstood on this point; I would not deny anyone, especially the farmer or the laborer, any and every convenience or luxury that he can afford. Nor do I wish to imply that the automobile is the only luxury that is sapping our prosperity. The easy money of those inflation days left us a legacy of extravagances that hang on like leeches. We cannot have real prosperity unless we live within our income.

Now, gentlemen, just a word as to what this means to the nation. The National Automobile Chamber of Commerce, of New York City, issues a booklet, called *Facts and Figures of the Automobile Industry*. Their 1922 booklet, covering the statistics for 1921, shows that in the United States there are about nine and one-third million passenger automobiles. It gives the number and average cost of the automobiles produced in 1921, and much other data. Without going into detail, basing my deductions upon a combination of the figures that are given in statistics, which I assume are authoritative, and the Iowa estimates, I find that the annual depreciation of the average automobile in the United States is $200.70. Reducing the cost of oil from thirty cents per gallon, the price in 1920, when I made those figures, to twenty-four cents, the present price, and reducing the cost of repairs one-third, which I believe to be approximately fair, I find that in 1921 the annual cost of operating an automobile in the United States, including depreciation, was $508.50.

The automobile association states that there are nine and one-third million pleasure cars, and anticipates that there will be another one and one-quarter million added, when the new figures for 1922 are made up. The computation on that is easy. If we multiply the cost of operating a single car by the whole number of passenger cars now in use, we have an expenditure of nearly five billion dollars. But, according to the National Chamber of Com-

merce data, we have not included all of the direct costs. Their booklet tells us that there are 256,000 men employed in factories, 250,000 in manufacturing accessories, 235,000 in garage work, over 250,000 salesmen, and so forth; those should all be included in our cost computations. They also tell us that there are 1,200,000 professional chauffeurs; that expense would be additional to the cost items included in our figures. Those professional artists usually command fancy salaries, but if we allow the modest wage of $100 per month, or $1200 a year, we have $1,440,000,000 paid to chauffeurs. Add that incidental expense to our cost of operation, and we have $6,180,804,775. Then to be fair, we should deduct a percentage for the cars that are perhaps paying their own freight, earning their own way. That can only be estimated, but the same automobile booklet tells us that the doctors of the United States are using over one hundred thousand cars; that the checking of a large number of licenses in Massachusetts indicated that nine per cent of the cars were owned by business concerns. Let us be liberal and deduct twenty per cent for utility cars. We then have an annual automobile expense of nearly $5,000,000,000 for pleasure cars now in use; and if we accept our booklet estimate of the number that will be indicated, when the 1922 returns are in, the annual cost will be materially more than $5,000,000,000.

Gentlemen, how long can we continue to pay the price?

(The following supplemental data, supporting the above estimates, has been submitted by Mr. Van Alstine.—Ed.)

Sample of questionnaire sent out to farmers, business men, auto dealers, etc. The figures carried out are the result of averages of all replies:

GILMORE CITY, IOWA, JUNE 1, 1920.

Dear Sir:

For the purpose of securing data on the average automobiles in ordinary use, I would like to have you give your estimate in answer to the following questions. We do not include trucks, busses, or commercial cars. This is intended to refer to the average passenger or pleasure cars of all kinds, in ordinary use.

What is your estimate of the average "life" of a car, meaning the number of years the average car owner uses a car?	4.5 years
What is your estimate of the average cost of new cars during the year 1920?	$1505
What is your estimate of the average mileage run per year, per car?	4550 miles
What is the average car's gas consumption; number of miles per gallon?	11.7 per gal.
What is the average oil consumption; number of miles per gallon?	354 mi. per gal.
What is your estimate of the cost of tires, and repairs, etc., on the average car, per year?	$268

ESTIMATED COST OF OPERATING IOWA AUTOMOBILES

The following estimates of cost are based on replies to questionnaires sent out to business men, farmers, and auto dealers, and averages summarized:

Depreciation, or cost of new cars in 1920; based on the average cost of cars in 1920 divided by the average life ($1505 ÷ 4.5 yrs.)	$350.00
Gasoline—based on mileage per car, divided by miles per gallon, multiplied by average price per gallon (4550 mi. ÷ 11.7 mi. x 30c.)	116.10
Oil—as above (4550 mi. ÷ 354 mi. x 25c.)	10.00
Tires, repairs, etc.—average estimates	268.00
Average license fee	16.00
Total cost per car in 1920	$760.10
Number of pleasure or passenger cars in Iowa as indicated by registry. There are 426.922 vehicles registered, and while no record is made in the state department, we base estimate on figures from counties, at 410,000 cars. Total cost (410,000 x $760.10)	$311,641,000
Value of Iowa corn and oat crops, as shown by the official bureau of crop statistics 1920: 10,300,000 acres—46 bu. per acre—gives a total yield of 473,800,000 bu. valued at 47c. per bu. Total value	222,686,000
Total corn crop falls short of auto cost by	$88,955,000
Total value of oat crop for 1920, as shown by bureau for 1920: 5,895,000 acres—39 bu. per acre—gives a total yield of 329, 850,400 bu. valued at 36c. per bushel. Total value	82,746,144
Total corn and oat crop falls short of auto cost by	$6,208,856

Estimate of average expense per car in the United States for 1921, based on figures and memoranda from *Facts and Figures of the Automobile Industry*, issued by the National Automobile Chamber of Commerce, and from estimates as to automobile expense in the State of Iowa:

Estimate life of car—Iowa figures		4.5 years
Estimated average cost per car—arrived at by dividing wholesale value of all cars produced—$1,093,918,000 by number of cars produced—1,514,000 =	$722.50	
Add 25% for freight, jobber's and retailer's commissions (which is less than actual)	180.62	
Net average cost to consumer in 1921		$903.12
Estimated annual mileage (Iowa estimate)		4550 miles
Estimated gas consumption (miles per gallon—Iowa estimate)		11.7 miles
Estimated lubricating oil (miles per gallon—Iowa estimate)		354 miles
Estimate cost of tires, repairs, garage bills, etc.		$178.67

Cost per car in the U. S., based on the above data and estimates:

Depreciation—based upon the average cost divided by the average life—$903.12 ÷ 4.5		$200.70
Gasoline, based on mileage per car, divided by miles per gallon, multiplied by price per gal.—4550 miles ÷ 11.7 x 25c.		96.73
Lubricating oil, estimated at		10.00
Tires, repairs, garage bills, etc.		178.67
License fees, based on total taxes paid, being license fees and personal taxes	$197,478,000	
Local license fees and miscellaneous taxes	11,000,000	
Total tax, exclusive of federal or gasoline, license for chauffeurs, etc.	$208,478,000	
Divide this total tax by the number of cars—9,325,150		22.40
Total cost per car, for 1921		$508.50

Estimated cost of operating all cars in the United States, based on foregoing figures, and making deductions for estimated number of cars used for business, or actual and necessary utility purposes:

Total cost for all cars—No. of cars as shown by the statistics, multiplied by the cost per car—9,325,150 x $508.50 =	$4,741,838,775
The National Automobile Chamber of Commerce booklet states that there are 1,200,000 professional chauffeurs employed, the cost of which is not included in the foregoing estimates of cost per car. Estimating a low annual wage of $1200 per year would add a cost of 1,200,000 x $1200, or	1,440,000,000
Making a total annual expense for cost of cars and wages of professional chauffeurs of	$6,181,838,775
Some of those cars are used by doctors, traveling men, business houses, etc., for utilitarian purposes, and we deduct 20% for such utility cars	1,236,367,755
Leaving a net cost for pleasure cars of	$4,945,471,020

The above figures do not include such expense as investment in a garage, extra equipment on cars, etc.

CHAIRMAN HAGERMAN: The meeting is now open to round table discussion, under the five-minute rule.

W. H. KING of New York: On the subject referred to, of the limitation of expenditures and taxes, we have the interesting topic of the relative value of the various legal devices to control public expenditures in the light of experience, and the further topic of home rule.

In New York we have had broad experience with tax and debt limitation. It should be borne in mind that in New York we have

two limitations upon the city, one upon the debt limit and the other upon the tax rate, both referring back to the assessed valuations of real estate. That system was working fairly well, when the city had recourse to taxation which included real estate and personal property and other subjects of municipal taxation. Since that time, however, two things have happened; the legislature has taken away from the city resources for taxation through assessments made locally, and secondly, there is a smaller base from which our debt limit and also our rate of taxation are determined. While certain taxes have been imposed from which the city receives a share from the state, as compensation for taking away the personal property, the state has also taken certain real estate which was formerly assessed locally, such as machinery, to which I referred yesterday, which amounts to some millions of dollars of assessed valuation.

The second feature which is materially affecting the city and the tax rate and debt limit is the fact that we are working under a charter which provides expressly for the amounts of salaries to be paid, and every year bills are prepared for the legislature, increasing the salaries, and increasing expenditures—mandatory legislation, which requires the city to include in its budget increases, not only for salaries but for investigating commissions, paid for by the city; for educational funds; roads; and improvements. All of these must first be taken care of in the budget before the necessities of the city government can be taken into account in fixing the tax rate.

Now, it does seem that while tax-rate limitation is a perfectly proper method of controlling extravagance, if that is to be attempted in New York City, or elsewhere, there should be at least a limit upon the amount which may be imposed upon the city, and which must be first provided for. That has been why the tax rate in New York has been up to the limitation; because first of all we have had to meet these mandatory requirements proposed by the state, irrespective of what the city or its taxpayers desire; which must be met in the budget. While on such legislation the mayor has the power of approval or veto, that power may be overcome by the governor and legislature.

This subject of tax limitation should take into consideration not only the fixing of debt limit and tax rate, but also the giving to the municipalities of more discretion and more home rule on the subject of what payments they may be required to make as to salaries and as to the various expenses of local government.

Frank B. Jess of New Jersey: Mr. President and gentlemen of the conference: I want to say just a word about this very important subject. I was very much interested in the remarks of Mr. Fernald, who told you of his connection with the making of the

budget in New Jersey, as the governor's adviser. If he had not been so exceedingly modest he could have told you of the very good work he has done in that connection.

New Jersey, I think, was perhaps one of the pioneer states in the matter of attempting to regulate or limit the tax rate. I think it was in the year 1905 that in response to a rather general public demand a bill was passed fixing a maximum tax rate of 1.75. That continued in operation for a number of years. However, at each session of the legislature amendments were introduced, which in one form or another permitted a departure from the limited rate. And I believe that whatever else we may think about this matter of the limitation of public expenditures, we shall all come inevitably to the conclusion that the fixing of an arbitrary rate is not the solution of the problem. It happens that in New Jersey at the present time, at least among those who are especially interested in the subject of taxation, there is considerable discussion of ways and means to limit public expenditures, because in that state, as in all others, expenditures have been mounting by leaps and bounds from year to year, and there is no effective check upon them.

We have the budget system in the state and in the municipalities, and the taxpayers have the right to appear after the budget is tentatively adopted and be heard, but there is absolutely no way, no means, by which they may effectively express their disapproval of any budget that may be adopted. We have a debt limitation, as to the issuance of bonds. We cannot in any case go beyond seven per cent of the assessed value of the real property, including improvements, and as I have thought of this matter in the last two or three years, it has seemed to me that it ought to be possible to work out some such system to apply to current expenses. I only wish to say this, in conclusion, that I believe that this conference can undertake no more important work than the consideration of this matter of limitation of public expenditures, and I should very much like to see a committee appointed that would give special study to the subject, with the object of reporting at the next conference, if possible, some workable, effective, scientific plan of dealing with this matter. That is a pretty big job and it may not be possible of accomplishment, but I think we ought to at least undertake it.

W. A. Hough of Indiana: Gentlemen of the conference: You may fix budgets until you go blind; you can place tax limitations in your laws; you can limit your levies; you can limit the operating capacity; but it will do you absolutely no good until you have vested in some discretionary power the right to pass upon these levies and to pass upon the indebtedness which townships and cities and counties seek to create.

We have in the state of Indiana, embodied in our constitution, a limitation on indebtedness of two per cent. That is in the consti-

tution. No municipality may constitutionally create an indebtedness amounting to more than two per cent of the assessed valuation of the property within that taxing unit. That means that the county may have a two per cent indebtedness; that the township may have a two per cent indebtedness; that the city may have a two per cent indebtedness, making in total, as was originally intended, a limit of six per cent on indebtedness.

Now, how does it work out in practice? The first thing they discovered a great many years ago was that in one of the cities of Indiana they had already reached their two per cent limit for the civil purposes of the city, and they had no money left to build a very badly needed school house; and the school authorities, in violation of the constitution, went ahead and borrowed the money to build the school house. The matter eventually got into the courts and our supreme court suddenly discovered that they had two townships there; one of them was a school township and the other was a civil township, and they decided that each township could go to the two per cent limit. Now then, that principle has been pursued in our state until today the township may borrow two per cent for civil purposes; it may borrow two per cent for school purposes; it may borrow four per cent for the construction of roads—for the supreme court found out there was still another township there, and that was the road township. In the city of Indianapolis they have a civil city, then a school city, then a park city; they have a sanitary district there, each one of which subdivisions may go to the full constitutional limit in borrowing money.

Now then, there must be some sort of a way which is better, which is more reasonable, and which is more of a common-sense business method of deciding whether or not a city may borrow money for some particular purpose. You cannot limit extravagance by limiting either the tax levy or the borrowing capacity, unless you know what the money is to be used for. And the law in no case ever specifies anything in regard to what the money shall be used for. So that there must be, in my judgment, some sort of plan, such as we have adopted in Indiana, that is, in each case where a city or a township seeks to borrow money, seeks to create indebtedness, or seeks to make a tax levy, it must set out what the purpose is that they have in mind, and what they are going to expend the money for, and if that can be passed to some power which is beyond the reach of local branches, beyond the reach of local influence, you may have the business of that city or township or county subjected to some such sort of inquiry and investigation as is applied to the expenditures of private business.

There are, in regard to extravagance, several different questions that ought to be considered. One of these is the growing disposition to exempt property from taxation, and the further growing

disposition, when money is needed, to find some new place where it may be raised, or to levy an additional tax upon property which is already taxed, or to find some new property to tax; to decide, perhaps, that something is property which has never been decided was property before. I think in justification of the system we are using in Indiana—with the experience that you have heard from Mr. Zoercher, that it will show that if it is not the best plan that can be devised, at any rate it is the best plan which is now in force, under the law, in any state in the Union.

We have saved the people of the state of Indiana more than $9,000,000 since this law was enacted on the 11th day of March, 1921. Mr. Zoercher failed to give you one provision of the law, and that was that where any municipality seeks to borrow money at an interest rate in excess of five per cent, a petition from taxpayers is not required to bring that before our board. We are at this time having no petitions asking for authority to borrow money at more than five per cent, but early in 1921 all of the petitions that came before us asked for six per cent.

CHAIRMAN HAGERMAN: The gentleman has one minute more.

MR. HOUGH: Well, just a word more, then, and that is in regard to this discretionary power lodged in our board, and I want to enlarge upon that for this minute I have left.

In order to decide whether or not an improvement is needed, we look at four different things, in deciding whether it is wise to incur the indebtedness. The first of these is the necessity for the school house, or the road, or water works system, or electric light plant, or whatever it is that the municipality seeks to expend its money for. We next look at the public sentiment in regard to it; we try to ascertain from the people who are present at the hearing, and from other sources, what the public sentiment is; how many are in favor of the project, and how many are opposed to it. We look at the ability of the taxing unit to pay, and that is determined by the total amount of property that they have, the indebtedness they have at the time, and the tax rate. Our tax rates run in Indiana all the way from less than one per cent in some of our taxing units, up to the city of Mitchell, Indiana, where the tax rate is 5.16 on the $100 of property, and you must remember that all our property is assessed at its full and true cash value—every class of property. We have no classified property tax. And then, we look further at whether or not the contract price for the improvement is excessive or not, and in the examination of that question we have saved the taxpayers thousands and thousands of dollars, because these men, no matter how well-meaning they are, who are located in these municipalities, and who expend this money, become the victims of plausible speakers and of the local influence which is exerted upon

them by their friends, the men who elected them to office, and by their business associates.

In the issuance of bonds for the construction of roads, the contractor has his banker; he has his friends; he has all of the men from whom he purchases any of his supplies; all back of him, urging that the project be put through; all urging that it is very much needed, and that the people are all for it; that they are in favor of good roads, that they are in favor of fine schools; that we must take care of these Indiana boys and girls upon whom the mantle of the American citizen will soon fall. Well, these men sit around with their mouths open, and they pass the thing.

I will cite one instance of something which happened, to show you how little the people really know about how their money is expended. I was in Madison county on a hearing for the construction of a road. I went over the road; it did not need to be built; it was a road in very good condition. They wanted a bond issue of $45,000 to construct the road. There were fifty-two men present at the hearing who had petitioned for the road. There were a number there objecting to it. I talked to these people about it. I told them what their indebtedness was and what their present tax rate was, and I showed them exactly how much their tax rate would be increased for a period of ten years if they constructed this road. The road had been built before, under the very same law, and bonds had been issued for its construction, and they had not yet all been paid off. I asked these men as plain business men—the farmers who were complaining generally about taxes: "Do you want to add to your great burdens the amount of money necessary to build this road?" One of the men got up and said, "Why, Mr. Commissioner, we don't understand this thing." He says, "There is a man came out here from Anderson; he told us there was so much money available for the building of roads, and that if we did not get it, somebody else would, and we just thought we would like to get some work done on this road, and we thought the money was available for it." I took a vote on that thing, and every man that petitioned for that road voted against it — every man. And the attorney who had prepared the petition got up and said, "Well, I guess maybe you are right about it, and that we ought not to build the road." The bonds were denied, and those people were saved an absolutely useless expenditure of $45,000.

Now, then, without the power which is vested in our board, that road would have been built; the contractor would have completed it and taken his money, and the taxes would have gone up still higher in that one township.

Now then, during the interim that Mr. Zoercher spoke about, when this law was not in effect, covering just a little more than sixty days—to be exact, it covered seventy-one days—during that

period of time, bonds in the state of Indiana were authorized by the local boards amounting to more than thirty millions of dollars, and it was that very act upon the part of these local boards that opened the eyes of the legislature and caused them to re-enact this law, with the provision in it that jurisdiction should be given to our board upon a petition of ten taxpayers.

Now, it means a great deal to the taxpayers to be able, in this sort of way, to regulate their expenditures; it arouses an interest in them; it educates the taxpayer; teaches him something about the ways in which his money is being expended, and I think that the whole question of education of the taxpayer is the most important one of all. I believe that there are very few men, in any walk of life—bankers, lawyers, farmers—who are thoroughly familiar with our taxing systems. They know that taxes are levied and that they must be paid, but how that money is expended, not one per cent of our citizens know. I don't think our friend, Senator Van Alstine, can lower the tax rate by cutting down this terrible extravagance in the use of automobiles. That is only a part of the general disposition of the times, manifesting itself not only in private life but in public life.

I should like to ask the Senator if at the time he inquired what the life of an automobile was, he inquired what was the average life of the people who rode in them?

Mr. W. P. White: I have never favored a uniform method of taxation, as has been suggested here, for the very reason that if we had a uniform method, we should not be able to profit by the experiences that have been related here, in regard to raising and spending the money. I think every tub ought to stand on its own bottom.

I am reminded very often in this situation of the old fable regarding the fox who had unfortunately caught his tail in the trap, and at the next foxes' meeting he came in and suggested that the foxes dispense with their tails; that it was an unnecessary appendage. So the old fox who was presiding over the assembly, like our good friend Senator Lord, said, "Will the gentleman arise and show his appendage that we may understand why he advocates this change in the fundamental law of foxes." So you people who are attempting to change the fundamental laws in regard to things; remember that thing! The initiative and referendum is one of the things that come out of it.

We need in municipal expenditures the kind of supervision that has just been outlined by the gentleman from Indiana. We have in Lowell, Massachusetts, a tax limit on bond issues. Of course, it is limited by the valuation of the property. We have large manufacturing properties in Lowell, and it is very easy to raise the assessed value of the community, and thereby be enabled to borrow

more money for needed civic improvements. In order to limit the amount of money that might be expended, we adopted a new city charter. We have five commissioners, and the commissioners were prohibited by very strenuous laws, and penalties, amounting almost to imprisonment, from violating the provisions of the charter. Notwithstanding that, one of the commissioners exceeded his appropriations for the year. Was there any civil process entered against that man? Oh, no. The district attorney was also a politician, and he did not like to bring out the opposition of the supporters of this individual. That man is now mayor of the city of Lowell. He had appointed a board to control public expenditures, and when the board did not do as he desired, he promptly appointed two other members and fired those, so that his project might go through. He has instituted a new board of assessors. Exactly what that board of assessors is going to do to the city of Lowell, I don't know, but I do know this, that if that system and method of spending public moneys which now obtains in the city of Lowell continues, the manufacturing interests that are located there will come out and locate in Minneapolis if your state laws permit it.

Our tax rate is $36.50 on a thousand dollars. We are promised a reduction of fifty cents on the hundred this year, but they have said nothing about the assessment of property. We may reduce the tax rate but we shall unquestionably increase the valuation.

Walter W. Law, Jr.: What is the basis of valuation now?

Mr. White: The basis of valuation is supposed to be the true value of the property.

Mr. Law: What is it as a matter of fact?

Mr. White: I will tell you my experience when I went to Lowell. They are supposed to publish annually a book of the assessed values of property in the city. They don't always do it, because it is not convenient to have it done. I bought a piece of property there, and looking up what it was assessed for, I found that I paid about the assessed value for the property, and in that way I measured the fairness of the valuations of other property in the city, but since then there has been a decided increase, of course, due to the inflation of values incident to the war, but do you think those assessments are ever going to be deflated when the prices come down? Nothing doing.

Mr. Hough: We reduced them in our state this year.

Mr. White: Because you have a state board who are not dependent upon the local people for their positions, and that is exactly what I am contending for; that we need the support of the farmers in our state to regulate taxation, and I hope that the far-

mers will not desist from their effort to straighten the business of taxation, as they call it, so we may know where we are at.

Now, on this question of taxation, I feel that there is only one solution; that the men who are organized in city unions should be disfranchised from voting for city officials, and those who are organized in state unions should be disfranchised from voting for state officials, and those in the service of the government of the United States should have no vote at all. Most of my life I had no vote, so I know whereof I speak. I went into Charlotte, North Carolina, and found the streets admirably paved and beautifully taken care of, and the city employees diligently working. Most of them were darkies. You men understand why they kept the city clean and why they worked. Up in Lowell, where we have organized labor who are voters, we tried to get a law to pave the streets by contract. Do you think the city voters accepted that thing? Not on your life! They had had a free-and-easy method of paving the streets, and it was a matter of indifference to them whether they got the streets paved within the limit of time set or not. I have seen them work—at least going through the motions. On my first introduction to Lowell I said, "This work is city work." I was asked, "How do you know?" And I said, "The way the men work."

CHAIRMAN HAGERMAN: Your time is up.

C. P. LINK of Colorado: Members of the conference: Colorado in 1913 passed quite a rigid limit of taxation law that I think even to this time is fairly modern. I might say that the final amount of taxes is lodged in the tax commission of that state. In 1918 we sent to all tax-levying bodies in Colorado a very rigid circular explaining, of course, the business conditions of the state, and requesting all the tax-levying bodies to hold their taxes down to the very lowest point consistent with good government. We were quite severely censured by some of the educational people; by some of the town government people, and by some of the road and county government people, but in the main the spirit of that circular was well followed, and resulted, I am sure, in very serious consideration, and some reduction in taxation.

I mention these matters to let you know that we have been of this spirit for a number of years there, but as was explained to you by the Indiana representatives, the attempt to hold down both annual taxes and bonds requires one of the most strenuous efforts, if not the most strenuous, known in the United States. You have heard explained by these representatives the vast difficulties in Indiana, how the law was repealed, put back, and then repealed, and how the officials proceeded thereunder. This illustrates the point I am making, that the people, generally speaking, are quite

determined to maintain especially their schools and roads, and in Colorado — and I presume it is true in the other states — over seventy-five per cent of our taxes go for schools and roads. I presume that is generally true.

Now, I will cite just one illustration, and that is our largest taxing district: Denver. A reform wave struck there and swept out the school authorities, on the claim of high taxes, and so forth, and put in a business commission—said to be—and I think it was very largely a business school board. Within three years' time that board was swept out by a wave, which has resulted in the present board being put in, consisting, I think, of five of the best men the school board has ever known. Still, it is confronted with the same situation; the taxes have not gone down. This new board has secured one issue of bonds and is now prepared to put up another bond issue.

Now then, harking back to this discussion which started the other night. I think it was most unfortunate that Dr. Adams was assailed as he was, because those of us who have worked here for ten years know he has been one of the most strenuous laborers for an equitable tax system and for economical and efficient expenditure of revenues, but I want to say that I share Dr. Adams' view—and as a Democrat I am taking much pleasure at this time in Colorado in going through that state trying to uphold the hands of our Republican federal administration and our Republican state administration. It is a shame that there is such a tendency, brought about by nasty, petty politics, to assail officers in power.

In closing I want to say to you: get the best laws you can, but Mr. Hagerman and Dr. Adams and one or two others have explained the situation, and that is to get intelligent budget systems and laws you must educate your people.

CHAIRMAN HAGERMAN: Before proceeding with the discussion, the chairman of the conference would like to make an announcement.

CHAIRMAN LORD: The simple announcement I desire to make is that the resolutions presented this morning by the committee on resolutions will be taken up for consideration at two o'clock sharp this afternoon. The gavel will fall at two o'clock to take up the matter of the resolutions and their adoption, and I hope that everyone of you will be present at that time.

A. M. FRASER of Winnipeg: I was very much interested in hearing the delegates from Indiana on the methods they have adopted for getting some control of excessive expenditures. The root of the trouble with us all, as I take it, is that those who impose the taxes are not the people who pay them.

In the city of Winnipeg we have a budget today for civic ex-

penditure of over ten millions of dollars. The total of that civic expenditure is levied at least to the extent of ninety per cent on the real property owner. The result is confiscation of property.

In his inaugural address to the new city council this year the mayor congratulated the council on the fact that they had been able to collect within $46,000 of this enormous budget of ten millions, equal to the whole provincial budget, but he omitted to state in his address, by forgetfulness or otherwise, that the amount collected included a sum of about $270,000 realized by a tax sale, representing over a million of assessed values of citizens' property confiscated.

When it is necessary in order to levy a $10,000,000 budget to confiscate annually a million dollars worth of citizens' property, things surely have reached a pretty pass, and I do not think there seems much ground for congratulation.

Since 1910, while our population and assessment have each increased about 50%, our taxes have increased 300%, and our tax arrears 500%, now amounting to nearly $5,000,000!

In the year 1918 I endeavored to make an investigation with regard to tax arrears in Northwestern Canada, and I found that, in round figures, the tax arrears in Winnipeg amounted to $3,500,000, in the suburb of St. Boniface $1,500,000, in Brandon $500,000, in Portage la Prairie $250,000, and in the Province of Manitoba $11,500,000; while in British Columbia they amounted to $14,000,000, in Alberta to $20,000,000, and in Saskatchewan I was unable to obtain the figures, but I believe they were worse than Alberta, and presumably were too horrible to disclose. At any rate I failed to extract them from the municipal commissioner's office. The numbers of the *Saskatchewan Gazette* of September and October, 1921, contained over 500 pages of double columns of tax-sales advertised. I submit that such facts and figures (due of course to inability, not unwillingness to pay) are a scandal and a disgrace to Canada, and I ask whether they do not suggest that there is something radically wrong with the whole basis of the real estate tax? I contend that it is unsound at bottom; that it does not adequately comply with the basic principle of ability to pay, or with the spirit of the fourteenth amendment to the American Constitution, while under certain conditions it is grossly unjust, and leads to grotesque and preposterous results. (See Professor R. M. Haig's remarks in the March, 1919 Bulletin of the N. T. A. on a statement I submitted to him with regard to some Winnipeg properties, showing that the ratio of the tax to the net rentals varied from 33% to 758%.)

At any rate, I should like to have the question of the soundness and equity of the real property tax as related to land and buildings locally assessed, *in its present form of an annual tax on assessed capital values*, referred to a committee of our association for ex-

amination and report. I venture to predict that as a result, it will eventually follow into oblivion the general property tax. It is too grossly unjust, discriminatory, and unscientific.

As to the necessity for better control by the taxpayer over both civic and provincial expenditure, let me give you a concrete case:

The city of Winnipeg has a population of 200,000 within the city limits proper (greater Winnipeg probably from 250,000 to 280,000). Of these 200,000, after deducting children of school age and under, there remains an adult population of 144,000. Of the latter 85,000 are electors (individuals on voters' list), and of the 85,000 electors about 32,000 are real property owners or taxpayers, while of these 32,000 there are only 24,000 resident taxpayers capable of voting on money by-laws, equal to one-sixth of the adult population. These 24,000, or 28% of the voters, have to pay for carrying out the policy of all those who have representatives in the council, and therefore realty is unfairly burdened because the owners of realty are not properly represented. Lavish expenditure is the result.

For instance, when a nurses' home is wanted in connection with one of our hospitals, a luxuriously equipped building costing $400,000 is erected for about 60 or 70 nurses. With the same money it would have been possible to erect a house costing $6000 or $7000 for each of those nurses.

And as to our provincial expenditures, we have a magnificent capitol building, which can bear comparison with any capitol building on this continent, or in Europe, but it cost nine or ten million dollars, and in view of the present population of the province of 600,000, is a crime and far beyond our requirements and the capabilities of our population.

Again, our provincial government has erected a palatial home for the deaf and dumb, out on the prairie beyond the reach of civic utilities, at a cost of about $1,000,000 — to accommodate less than 200 pupils. For the same money a separate $5000 house could have been built for each of those pupils.

How are such extravagances to be controlled unless some sort of intermediary court, such as the delegates from Indiana have described, is established to investigate on demand of the taxpayers any proposed expenditures, with power to curtail or prohibit, if in their judgment circumstances and conditions do not warrant the outlay?

CHAIRMAN HAGERMAN: Any further discussion, gentlemen?

THOMAS A. POLLEYS: I happen to represent the Chicago and North Western Railroad Company, in charge of tax matters, and I want to say that I have given considerable study, as all of you gentlemen representing the states and other corporate corporations have, to the trend of public expenditures. I am very much interested, and I am rather hopeful of something being accomplished in

the way of retarding at least the future growth of tax burdens by proper scrutiny and by giving proper powers to boards like the Indiana commission, to sit in judgment upon proposals for tax expenditures and bond issues, but I have no great faith that we are going to accomplish anything very much in that way in the near future, or ultimately.

As compared with the present amount of taxes, we might just as well get ourselves accustomed to the idea now, and for any time in the near future, that the aggregate amount of our tax burdens, either federal, state, county, local or school, are not going to be substantially less than they are now. I venture a guess—merely a guess—that if we ever see in our lifetimes the total tax burdens of the federal government recede to a point of three billions of dollars per annum, we shall be in luck. I venture the suggestion that no state which is now represented in this conference will see its tax burdens recede by as much as ten to fifteen per cent of the total amount at which they now stand. That is not saying that may not be so. I am guessing that in my opinion it is going to be so, and I think we might as well get used to the idea.

Furthermore, I am not so much of an adherent of the idea that these taxes after all are so appalling. We have been accustomed in the last two or three years to talking as though taxes were taking bread and butter out of our mouths. As a matter of fact, the figures given by Senator Van Alstine very well illustrate the fact that when the state of Iowa is paying annually for the upkeep of its automobiles—as it can well afford to, as far as that is concerned, if it wants to—is paying three times the amount of the total taxes, state, county, local and school, in that state, why, I think, it looks a little ludicrous to over-emphasize the amount of taxes being paid. I do think there is some over-emphasis.

If you put the movie bill alongside of the automobile bill, I believe they would put your tax bill so far in the shade that you could hardly recognize it.

As one of a number of people who are interested in these tax matters, I have been distributing for our company a large amount of statistical information bearing upon tax expenditures as well as upon real estate valuations, for quite a number of years. There is a great deal of interest displayed in these tables that are issued as to tax expenditures, notwithstanding they are issued by a railroad and discounted as propaganda and all that sort of thing, but I have come to the conclusion that the number of people in any community who have an intelligent and a permanent and continuing interest in tax matters, outside of the day they go to pay their tax bill, is a minor fraction of the population, and you might as well get your local interest organized.

If you think you are going to have the public at large flocking to attend large meetings, bearing upon tax expenditures, you are

deceiving yourselves; and you don't really believe it. If you would organize locally by counties and communities and get a small group of men who have an intelligent interest in the first place, and who will have an increasing interest as time goes on, which ought to be and can be a continuing interest, as far as they are concerned, you can get the education locally you should have, upon that matter; you can bring to bear upon people who take an interest in tax burdens a judgment that is well-advised and that is concentrated, and which can be brought to bear by one small group of men on another small group of men, and so on. I don't think we stand much chance of getting anywhere with anything other than that.

CHAIRMAN HAGERMAN: Is there any further discussion, gentlemen?

MR. VAN ALSTINE: Apropos of the comments the gentleman was now making; when I returned from the last session of the legislature, at which our legislature increased the state tax about one and one-half mills, one of our leading farmers came into my office He had driven up in a Chalmers car, and he spent quite a little time protesting about that one and one-half mills. I explained to him the general increase in the price of commodities which made that absolutely necessary, and so forth, and finally he said, "Well, now, you can explain all you please, but this increase in taxes has got to stop. It is getting beyond the limit," and so forth. "Now," I said, "my friend, I just want to make this suggestion; I want to ask you if you realize how much that increased the tax on your farm?" And he did not. I told him it increased the tax on his farm between two and one-half and three dollars. "Now," I said, "you come in here and you spend a half an hour of your time protesting to me about that increase in taxes," and I said, "You will go down here to the garage and buy a tire for that car and pay $60 for it without batting an eye."

I wish to say in reference to those figures I gave that I was called upon without previous notice, and I should like the privilege of reviewing those figures. I want to say that I believe the Iowa farmer or any other farmer perhaps has a license to own an automobile more than anybody else. He rides in the country, I want him to have all the pleasure he gets out of it; I don't want to deny the farmer or laboring man or any other man any convenience or any luxury that he can afford; but if it is undermining his homestead, he had better forego it, and I believe such figures as these had better be looked squarely in the face and that we should ask ourselves whether we can pay the bill.

CHAIRMAN HAGERMAN: If there is no further discussion, the conference will adjourn to two o'clock this afternoon.

(Adjournment)

TWELFTH SESSION

Friday Afternoon, September 22, 1922

Chairman Lord: Is the chairman of the committee on resolutions present?

Philip Zoercher of Indiana: Mr. Chairman, I move that this conference adjourn at 4:30 *sine die* so that the tax association can meet and transact business that may come before it.

Chairman Lord: I think the motion a very timely one. The tax association, as you all know, has to elect officers and transact some business that will take fully half an hour. Trains leave, especially trains eastbound, about half-past seven. That would give all of you gentlemen an opportunity to get your matters fixed up and your bills paid and a chance to shake hands all around and get away in good shape without hurrying, and I feel very confident we can accomplish everything between now and the time suggested by the gentleman from Indiana. Now, if there is a second to that motion, I will put it.

(Motion seconded)

Chairman Lord: It is moved and seconded that when the conference adjourns this afternoon *sine die* it be at half-past four. Are there any remarks?

Charles J. Tobin: Shall we have to turn the clock back?

Chairman Lord: I don't think so.

(Ayes and noes)

(Motion carried)

Chairman Lord: The conference will adjourn at that time, and without further motion. If we can get through before that time, why, all right.

The secretary will read the resolutions so that we may have them in mind once more.

Secretary Holcomb: The first resolution has to do with the *Bulletin* (reading):

Resolved, That this conference commends the *Bulletin* published

by the National Tax Association and expresses its appreciation of the services rendered by Professor Harley L. Lutz, editor.

I move the adoption of the resolution.

(Motion seconded)

CHAIRMAN LORD: Moved and seconded that this resolution be adopted; are there any remarks?

(No response)

(Ayes and noes, unanimous)

CHAIRMAN LORD: The ayes have it; the resolution is adopted.

SECRETARY HOLCOMB: The next resolution is: (reading)

Resolved, That this conference reaffirms the position taken by the thirteenth annual conference on taxation, held in Salt Lake City, Utah, on September 10, 1920, with reference to opposing the exemption from income taxation of the salaries of all public officials and of the interest on future issues of federal, state or municipal obligations, and hereby recommends the submission by the 68th Congress and the ratification by the states of an amendment to the Constitution of the United States which will permit the principle thus stated to be embodied in our national income tax law.

CHARLES J. TOBIN: I move that the resolution be adopted.

NILS P. HAUGEN of Wisconsin: I second the motion.

CHAIRMAN LORD: Moved and seconded that this resolution be adopted. Are there any remarks?

JOHN E. BRINDLEY: Question.

CAPTAIN W. P. WHITE: I understand that this resolution has been passed twice heretofore, apparently without opposition. I was surprised to find that a form of resolution which had been opposed was changed in the very last hours of the convention and that it had been adopted without opposition. Now, I have been accused here of opposing everything that is proposed. I feel that my opposition is justified; that no public question should be accepted without a thorough discussion and analysis of the opposition. We have a great habit in America of "passing the buck". We "let George do it". We have several amendments to the Constitution of the United States which are exceedingly undesirable, and it has been done because—well, most people want it, so let it go.

Now, there is no necessity for the adoption of a constitutional amendment of this character. The states can tax their own issues, the government of the United States can tax its issues, and that is as far as it is necessary to go, so far as issues of public securities are concerned. I understand that the issues of a state can be taxed

as intangible property in other states, so that the states thereby have an opportunity of collecting tax on issues of other states.

The United States has no power of taxation of intangibles, but it has other forms of taxation, and one of the most deplorable forms adopted, to my mind, was the amendment which permitted the taxation of income. People who were opposed to it, or who had any thought of opposing it, said it did not greatly matter; that the imposition wouldn't be very great; that they would not suffer under it; but as a result of the United States income tax, the residents in four or five states of the United States are paying the majority of the income tax.

Now, don't run away with the idea that the inhabitants of those states don't get something back from the others. New York happens to lie at the gateway of the United States, and the people of New York City levy a tribute on the whole country, on account of the volume of traffic that goes through there; so that when you are attempting to saddle the collection of your taxes upon a few people, they are going to collect the taxes back again, and they are going to charge you something for the privilege of doing it. Had we insisted upon a more direct taxation, or sales tax, it would have been more equitable and adjustable; it would have cost one-tenth of the income tax, and people would gradually have adapted themselves to the idea that they were willing to pay their own bills.

Now, our farmer friends come here with a desire to take away somebody's income. They are not going to profit by that sort of business. If they are successful in it, they will destroy industry.

H. C. McKenzie: Allusion has been made to the farmer. I take it that that means me. I just want to call the attention of this assembly to the fact that if the gentleman who has preceded me had his way, the bulk of the taxes that have been collected in recent years would come out of sales taxes instead of out of incomes; and I just want this body for a minute to consider what the effect would be in the United States of America if we put a tax on food, fuel, clothing, and shelter, and then exempted from taxation the men with incomes of $300,000 and up. Think that proposition over, gentlemen. If you want to turn this country Bolsheviki, within the next ten years, just take his advice.

Captain White: I should like to rise to object to the inference that I am here defending a principle for the benefit of any particular class of our community. I am here to oppose what I think are wrong tendencies in taxation; tendencies that will ultimately be detrimental to our country. I am not at all an advocate of the very rich man.

C. J. Buell: I have generally been an opponent of the income

tax, since it was first broached, and I am not satisfied yet that the income tax is a solution of this problem; but I cannot let the gentleman's remarks pass without calling attention to one or two things.

The enormous fortunes that have been piled up by those people in New York and which are now being tapped by the income tax, to my mind furnish a very strong argument in favor of the income tax; that it really does reach those fellows and gets something out of them. Most of those fortunes, moreover, are of a character, and the effect of the income tax upon them is such that no matter how much you take away from them, they cannot pass it back to the consumer. It simply diminishes their net income, and that is the merit of the income tax, as applied to them. In their case it is a case of a tax that does not fall on the consumer.

Now, the income tax is not of that character all the way through. A part of the income tax is of such a character that it can be passed on to the consumer. Take the great landlords of New York, take the Astor estate, and Astor does not live in this country at all. I think the income tax is so fixed that it gets Mr. Astor, doesn't it?

Mr. McKenzie: Some of his real estate.

Mr. Buell: Yes, and it ought to get it, because he hasn't anything to do with the making of the value of that real estate; not a particle; no more than you or I, not a bit. The public made that value, and whatever the public can get out of it, they ought to have. We have a lot of millionaires in New York—

Charles J. Tobin (interrupting): Mr. Chairman, I want to interrupt for a minute; I don't think this place is a forum where citizens of New York may be maligned and criticized. We are supposed to be here discussing principles of taxation. I want to say that it was unfair on the part of Captain White to say that New York is taking tribute from everybody that passes through. We ought to confine ourselves to the subject at hand and not indulge in personalities. And I object strenuously to the speech now being made, and I think it should be stopped.

(Applause)

Mr. Buell: There is no more forcible way to bring out a principle than to show just exactly how it will work in particular cases. I will eliminate "Mr. Astor"—you can put anything you please in. That is not a personal matter at all; it simply amounts to this; that the income tax is getting a large amount of revenue from people that you ought to get it from. That is all I want to say about it.

(Call for the question)

Chairman Lord: Are you ready for the question?

JOHN E. BRINDLEY: Question.

CHAIRMAN LORD: All in favor of the adoption of this resolution will signify by saying aye.

(Ayes and noes, one vote against)

CHAIRMAN LORD: I declare the resolution adopted, in accordance with the rules of the conference.

The Secretary will read the next resolution.

SECRETARY HOLCOMB (reading):

Whereas, it is recognized that a uniform rule of apportionment, for taxation purposes, of the net business income of mercantile and manufacturing concerns, whose business is conducted in more than one state, is essential, in order that fairness and equity may prevail,

Therefore be it Resolved, that the fifteenth national tax conference hereby urges the adoption of a uniform rule by states, calculated to fairly and equitably apportion such net business income.

CAPTAIN WHITE: I move the adoption of the resolution.

(Motion seconded)

CHAIRMAN LORD: Moved and seconded that the resolution be adopted; are you ready for the question?

(Call for the question)

CHAIRMAN LORD: Are there any remarks?

(No response)

CHAIRMAN LORD: All in favor of such resolution will signify by saying aye.

(Ayes and noes, unanimous)

CHAIRMAN LORD: The ayes appear to have it; the ayes have it, and the resolution is adopted.

The secretary will read the next resolution.

SECRETARY HOLCOMB: The next resolution in the order in which it appears here is by the Committee on the Taxation of the Shares of National Banks. (Reading):

Whereas, The existing law regarding the taxation of the shares of national banks places a limitation upon the tax which may be imposed by the states which is out of harmony with the present tax laws of some twenty states and which must tend to discourage more improved methods of taxing intangible personal property in all the states, and

Whereas, a considerable amount of litigaton has already been undertaken in relation thereto which, if successful, will place the

national banks in a favored class among taxpayers; BE IT HEREBY

Resolved, that the national tax conference favors the speedy amendment of section 5219 of the United States Revised Statutes, so as to provide that the tax imposed upon the shares of national banking associations shall not be at a greater rate than is assessed upon other moneyed capital employed in the business of banking, and to confirm to the states the right to assess or re-assess any taxes heretofore paid, levied or assessed upon the shares of national banks, which were levied at no greater rate than those levied upon similar state institutions; as is provided, for example, in the Kellogg bill, S. 3696.

MR. TOBIN: Mr. Chairman, I move to amend the resolution by offering the following substitute. I should like to have a few moments to speak to my amendment after the same is seconded.

MR. E. F. COLLADAY: Mr. Chairman, I second the motion.

CHAIRMAN LORD: The secretary will read the proposed amendment.

SECRETARY HOLCOMB (reading):

Whereas, The existing law regarding the taxation of the shares of national banks places a limitation upon the tax which may be imposed by the states, which is out of harmony with the present tax laws of some twenty states and which must tend to discourage more improved methods of taxing intangible personal property in all the states, BE IT HEREBY

Resolved, That in the opinion of this conference, the respective states should be permitted to tax national banks, or the shares thereof, or the income therefrom, according to such systems as they may consider desirable, provided that such taxation shall not be at a greater rate nor impose a heavier burden than is assessed or imposed upon capital invested in general banking business and the income derived therefrom, and hereby recommends the immediate amendment of the Revised Statutes of the United States, so as to permit the principle thus stated to be embodied in said Revised Statutes.

CAPTAIN WHITE: I second the amendment.

CHAIRMAN LORD: It has been moved and seconded that the amendment be adopted; are there any remarks?

MR. TOBIN: I should like to speak to the question of the amendment.

CHAIRMAN LORD: I recognize the gentleman who proposed the amendment.

MR. TOBIN: I might explain to begin with that I have accepted

the preamble as found in the resolution offered by the committee on resolutions, but have stricken out the entire second part of the resolution which reads as follows (reading):

"A considerable amount of litigation has already been undertaken in relation thereto which, if successful, will place the national banks in a favored class among taxpayers."

My point there is that if we are to censure national banks we shall inaugurate a scheme of resolutions, to censure anybody, or any group of taxpayers who see fit to contest a particular tax. It must be well understood that if a tax is in dispute or in litigation until some new form of taxation is adopted, that class of taxpayers is not to be considered favored. They will be in their old place until a change is made, and I do not believe that it is the province of this conference to censure, or to say that people who believe in their particular principles or who contend that they are right, should not have the privilege which is accorded everybody, to litigate. Here we say that if this litigation is successful the bank will be put in a favored class. That will be entirely misunderstood as it goes out to the public.

Everybody realizes that if the Supreme Court of the United States follows the decision in the Richmond case, it will necessitate a change in our plan of taxing banks, but that would be true if we were litigating the special franchise tax law of New York, or if we were litigating any particular section of the tax law of New York.

The people will think that the class of taxpayers included in the act are being favored. I think the word "favored" is entirely incorrect, and that it will surely create a false impression as to the work this conference is doing throughout the country. I believe that language of this sort should not find its place either in the resolution proper or in any preamble of the resolution, and I have taken it out.

S. S. KALISHER of Pennsylvania: Is that the only change?

MR. TOBIN: No; I want to explain as I go along. Now, when we come to the resolution proper, I object to it in form. The resolution, as drawn, places this conference on record for a particular piece of legislation. I have gone through the records of the conferences; gone back over many of its reports; and I find that this is the first time that a conference has attempted—I will put it this way—has attempted to favor particular legislation. If we will just bring ourselves back to the purpose and intent of this conference and of the constitution of the association, we shall find that its purpose is clearly stated in the constitution. It is to formulate and announce, through the deliberately expressed opinion of the conference, the best economic thought.

Now, I say that we should content ourselves with expressing the best informed economic thought on this particular problem, and that it would be well to follow what I have attempted in this particular resolution; to recommend to Congress that these principles as enunciated shall be carried into the Revised Statutes.

All that is attempted to be done with the resolution as handed in by the resolution's committee—all that I have endeavored to do is to set the thing right; to conform to the constitution, in its plain intent and purpose, as outlined in the publications that we have been issuing from time to time, and keep the record straight. I want to assure you that I have gone over the record carefully; I have gone over all the resolutions and I have failed to find where we have come out plainly and openly and attempted to legislate. That is just what is being done here in the resolution as handed in by the committee, and which is now up for consideration. We are endeavoring to legislate. I venture to say that those men who have served in a legislative body will recall with resentment the attempts of outsiders — whether it be an association, individual, or otherwise—to present recommendations as to just what they should do, and how they should do it. We should leave that to the legislative body; that is their job; it is not our job. Our job here is to formulate correct principles, and then we should stop, and I suggest that we should consider this matter carefully. Don't make a hasty decision. I presume that the resolution as presented by the committee will be adopted. I believe it will be adopted because of the intense interest that the respective commissioners have in this particular subject; but this is not the place to carry it through. The place for them to act is in their respective offices, through the influence they may exert in their respective states upon their representatives in Congress; not in this particular forum. I repeat again, this forum, as outlined plainly in the constitution, is simply designed to formulate and announce. That is all we can do here.

Now, I say, gentlemen, do not let us get off the correct path. This is the fifteenth conference that has been held, and do not, because of the intense interest in the subject, move from the sound course. Next year it may be public utilities; the year after that it may be something else. The advocates of proposals on these subjects will demand the same action that those concerned with bank taxation are demanding today. Don't let us be carried away, because the matter is of great moment. I believe the matter rests with the various commissions, through their respective legislative representatives in Washington, and not with this forum. Because I believe it to be of importance, Mr. Chairman, and because I believe that it goes back to something that may block us in the future, I am going to ask for a rising vote on this proposition, because I believe it goes to the root of our organization. As I said before, and state again, we must keep away from legislating.

NILS P. HAUGEN of Wisconsin: Vote.

CHAIRMAN LORD: Are there any further remarks? Are you ready for the question?

(No response)

WALTER W. LAW, JR., of New York: I am not going to talk very long; I simply want to point out that the real difference between these two resolutions is the omission in the second resolution of all reference to the validating clause. That is the crux of the question that we have to decide today. First of all, we had an amendment proposed by Professor Fairchild, which in his judgment conformed to the criticism that was made, namely, that we should express general principles and not make the resolution rigid. In the form in which it is proposed, I believe it meets that criticism.

The real point of opposition is the validating clause, and the purpose of it is—I will say this as my own opinion—that the opponents of the validating clause can go to Congress and say that this matter was presented to the tax conference, and the tax conference refused to approve the validating clause.

Now, the validating clause simply means this, that in twenty states today; or at least in three or four or half a dozen states today, but in twenty states tomorrow, it will be impossible for the banks to recover back taxes which they have already paid to the various local communities, which they were satisfied with and which have been expended in large part, in good faith, by the communities. In my state there have been attorneys who have gone over the state and solicited these suits on contingent fees, and I don't think that this association will want to stand for omitting to take action, when that omission will be interpreted by Congress as approval of the recovery back of these taxes.

E. F. COLLADAY of Washington, D. C.: I want to call the attention of the conference to this fact; the resolution as presented by the resolutions committee calls for the recall of judicial decisions. That is what it does, and if the convention wishes that this great association shall go on record in favor of that principle, then adopt the resolution. If not, amend it, so as to eliminate the part of it which favors the recall of judicial decisions.

The Supreme Court of the United States in 1885 decided exactly as it did in 1921 on this question. The Congress of the United States, shortly after creating national banks, protected them against radical state legislation. A number of state legislatures have taken up a new form of taxation, namely, the income tax for states, without stopping to find out wherein it would conflict with the higher and controlling legislation of the United States. They were reminded of the situation by the Supreme Court, in the Richmond bank case.

Now, here is a recital that there is litigation pending, and this organization is asked to go on record in favor of the proposition, that you want to beat the courts to it; you want to recall a decision of the Supreme Court of the United States by changing the law; you want to prevent the enforcement of the rights that were enunciated by the Supreme Court in that case, by changing the law.

Now, the effect of the substitute resolution is to strike out all reference to litigation; to strike out all the language which amounts to demanding the recall of the decision of the Supreme Court of the United States. The loss to any one state, or two states, or a half-dozen states, of any amount of money is of less importance to the people of the United States as a whole, and of all the states, than that this organization should go on record in favor of the recall of judicial decisions.

Edward Lyle of Georgia: Do you mean that because the Supreme Court of the United States has decided a thing, that that *statu quo* shall remain forever?

Mr. Colladay: No, sir; I am a member of the committee on resolutions; I am in favor of amending section 5219, so as to make the way straight for the future, but I am not in favor of passing a resolution in this body which shall combine a fair and clear proposition for properly amending section 5219 with a proposition for the recall of a unanimous decision of the Supreme Court of the United States, on rights as between an individual state and the national banks.

Thomas E. Lyons: Would this change the Richmond decision?

Mr. Colladay: It will not change the decision, but it will prevent the Supreme Court from following the Richmond decision in other pending cases.

Mr. Lyons: It will not prevent it.

Oscar Leser of Maryland: That is high-sounding language, about the recall of judicial decisions. This resolution will not seek to have Congress recall a judicial decision, because the decision of the Supreme Court in that case was that the banks of Virginia were entitled to a certain rate, and they got it. That is all that decision held. This resolution will enforce a moral obligation. It will show that the conference favors the more decent thing; that when a certain interpretation has been acquiesced in for twenty or twenty-five years, and all affairs have been regulated on the basis of that interpretation, when the very tax imposed under these laws has been passed on and loaded in the expenses of the bank, Congress would certainly be doing an immoral thing if they did not validate the actions of the legislature.

H. C. McKenzie: The thing I am interested in especially is substantial justice. As I understand the situation, unless these taxes, which amount to about $12,000,000 or maybe a little over, in the state of New York, are validated, it will come to this; the banks which are now paying about 1½% will escape their taxes, and the twelve millions that they escape will be put over on real estate, which is now paying 2½%. That is the root of that matter.

Chairman Lord: Are there any further remarks?

Captain White (rises for recognition)

(Call for the question)

Chairman Lord: I think we owe it to the Captain to recognize him.

Captain White: I think, gentlemen, that the passage of laws which are retroactive, although they may do substantial justice in a given case, may be dangerous; not because a case might go against the United States or against a state, in the courts, but because if a law is decided not to be drawn so as to cover a particular case, the state legislature can go to work and validate the original assessment and the litigant is without recourse. Now, in justice to our federal constitution, which especially prohibits *ex post facto* laws as regards criminal law, I think we ought to observe the same principle in regard to civil law.

Chairman Lord: Are you ready for the question?

(Calls for the question)

Nils P. Haugen: Question.

William H. King of New York: It is very natural that the attorneys who oppose this litigation in New York, including Mr. Tobin and Mr. Colladay of Washington, should have their personal interests in this litigation.

There are in question in the state of New York eight millions of dollars of taxes, covering several years. There had been no question theretofore about those taxes. Upon the trial of the case the attorneys stated in the record, that the reason for the litigation was the decision in the Richmond case. With respect to this conference adopting a principle, the principle which is involved here, of validating things which the legislature might have done in the first place, has been recognized by Congress in other instances and has been applied by various states throughout the United States. It is an economic principle and not the recall of decisions.

The only criticism which was valid and which could be made was that the original bill limited it to state banks and trust companies. That has been eliminated by this resolution and by the

Kellogg bill. It applies to all banking institutions. It means in the state of New York, where we did confine it to state banks and trust companies, that there would have to be an amendment to the law, to conform to this resolution. And upon the general principle of justice and fair dealing, this conference is attempting to take into consideration not only the interest of the bankers but other parties who will have to pay the burdens of these taxes. In view of the fact that the principle of validation has been approved by the courts, by Congress and by all the states, it seems as if this resolution in its original form should be adopted.

CHAIRMAN LORD: Are you ready for the question?

(Calls for the question)

CHAIRMAN LORD: The question is upon the amendment offered by Mr. Tobin of New York.

(Ayes and noes; two votes for)

CHAIRMAN LORD: The noes appear to have it; the noes have it and the amendment fails of adoption.

MR. TOBIN: Mr. Chairman, I move to amend the resolution as offered by the committee by striking out the second "whereas", under the explanation that I previously gave.

CHAIRMAN LORD: Read it.

MR. TOBIN (reading):

"*Whereas,* a considerable amount of litigation has already been undertaken in relation thereto, which, if successful, will place the national banks in a favored class among taxpayers."

I am quite satisfied that that is going to be entirely misconstrued. It has no place in any resolution. You are picking out the national banks, and saying that if they see fit to litigate, they should be censured; because they litigate; because they believe in their own cause. Some other class of taxpayer may hereafter be in the same position; because they see fit to litigate, are they to be censured and charged with being in a favored class? I believe that language of that sort should find no place in any resolution of this body.

CHAIRMAN LORD: Did the suggested amendment receive a second?

(Motion seconded)

CHAIRMAN LORD: It is moved and seconded that this original resolution as adopted by the committee on resolutions be amended by striking out the second "Whereas".

MR. TOBIN: Down to the word "taxpayers".

SECRETARY HOLCOMB: There are other slight changes necessary; such as taking out the word "and".

MR. TOBIN: Take out the word "and" in the first paragraph, and take out all down to and including "taxpayers" in the second paragraph.

CHAIRMAN LORD: You have heard the amendment as announced by Mr. Tobin.

(Ayes and noes)

CHAIRMAN LORD: The noes appear to have it; the noes have it and the amendment is lost.

(Calls for the question)

CHAIRMAN LORD: The question now arises upon the adoption of the original resolution as reported by the committee.

(Calls for the question)

CHAIRMAN LORD: Any further remarks?

(Calls for the question)

(Ayes and noes; three votes against)

CHAIRMAN LORD: The ayes appear to have it; the ayes have it and the resolution is adopted.

SECRETARY HOLCOMB: The next resolution has to do with the federal estate tax. (Reading)

Whereas, at the first conference of the National Tax Association, held in 1907, it was resolved that it was the sense of that conference that inheritance taxes should be reserved wholly for the use of the several states, which resolution has been reaffirmed at subsequent conferences;

And *Whereas,* inheritance taxes have not heretofore been imposed by the federal government, except as emergency measures in times of war;

And *Whereas,* the federal estate tax now in force imposes an unduly heavy burden of expense upon the estates of deceased persons, in addition to the tax itself, out of proportion to the revenue received by the government, seriously interferes with the administration of such estates and delays final settlements;

Be it Resolved, That the estate tax should be recognized by Congress as a war measure only and should be repealed at the earliest possible moment.

CAPTAIN W. P. WHITE: I move the adoption of the resolution.

(Motion seconded)

CHAIRMAN LORD: Moved and seconded that the resolution be adopted. Are there any remarks?

(Call for the question)

(Ayes and noes; one vote against)

CHAIRMAN LORD: The resolution appears to be adopted; I declare it to be adopted.

SECRETARY HOLCOMB: The next resolution as submitted by the resolutions committee is the formal resolution of thanks. The chairman of the committee has already expressed his difficulty in adequately expressing himself or expressing the opinion of the committee on this subject, so that I don't need to repeat his remarks.

CHARLES J. TOBIN: I move its adoption.

SECRETARY HOLCOMB: I think I will read it; as it is appropriate that it should be read.

CHAIRMAN LORD: I think it should be read.

CHARLES J. TOBIN: I thought you didn't want to read it.

SECRETARY HOLCOMB (reading):

Resolved, that the thanks of the conference be extended to:

The committee on arrangements, Mr. H. J. Burton, chairman.

The Minnesota Tax Commission, Mr. Samuel Lord, chairman, Mr. N. A. Nelson, secretary, Mrs. B. M. Hoatson.

Minneapolis Civic and Commerce Association, Mr. H. M. Gardner, manager, Mr. F. L. Olson.

Mr. W. L. Harris.

League of Women Voters, Fifth District, Mrs. R. H. Carpenter, secretary, Mrs. T. E. Cobb, chairman of committee.

Minneapolis Real Estate Board, Mr. H. N. Nelson.

Washburn Crosby Company.

Mr. C. E. Hall of the Northwestern Bell Telephone Company.

Mr. G. L. Fort, city assessor.

Mr. Al. P. Erickson, county auditor.

Mr. C. T. Moffett.

Northwestern Bell Telephone Company.

The management of the Curtis hotel.

The press of Minneapolis and St. Paul, to whose efforts, exerted in too many ways to record, the success of the conference and the pleasure of the delegates, and especially that of the ladies accompanying them, are attributable.

CHAIRMAN LORD: That is why I wanted the resolution read.

EDWARD LYLE: I move adoption with a rising vote.

(Motion seconded)

CHAIRMAN LORD: The resolution seems to be adopted.

Now, there are one or two resolutions which will be offered from the floor, which I will entertain at this time.

H. J. HAGERMAN of New Mexico: I would ask unanimous consent to be allowed to introduce a resolution on the subject of public expenditures at this time.

CHAIRMAN LORD: Is there any objection?

(No response)

CHAIRMAN LORD: There being no objection I will entertain the motion.

H. J. HAGERMAN: The resolution which we have prepared is as follows:

Resolved, that the President of the National Tax Association be empowered to appoint a committee on retrenchment of public expenditures, consisting of as many members as in his judgment may be advisable, such committee to be authorized and empowered to co-operate with any state or national bodies, official or otherwise, engaged in a survey of public expenditures, better governmental methods, and the reduction of the burden of taxation.

(Continuing) There seems to be a very decided sentiment in this association, in spite of the fact that in the past various committees of a similar nature to this have been appointed, that at this time the situation both in the state and in the national government is such as to make a further investigation of this kind advisable and capable of producing results. The great difficulty, of course, is in finding men who are willing to give their time to such an investigation and who will serve on such a committee. Various people, including the secretary of our association, have already been engaged in trying to secure the co-operation and services of some man of outstanding ability in the East to undertake this work, and we are told that he is still corresponding with some of the gentlemen, in the hope of finding such a person. The resolution includes the power of co-operating with other committees at present at work on these matters; one of them being the educational finance committee, the headquarters of which is in New York, and which we understand is backed to considerable extent by the Carnegie Foundation, and otherwise, which is investigating the matter of school costs throughout the country. Those who are members and in active charge of the committee will be more than glad to co-operate with a committee of this association on the lines mentioned. The matter is left open for the officers of the association to act upon, in case they can find the proper personnel for such a committee.

Captain W. P. White: I move the adoption of the resolution.

Harry P. Sneed of Louisiana: In explanation of what might appear to be an omission on the part of the committee on resolutions, I should like to explain that it was the sense of that committee that the resolution which has just been presented by Governor Hagerman should have been presented at the meeting of the association itself, being addressed to the National Tax Association. I have a resolution drawn up in almost the same words, which it was the intention of the committee to pass to the association when it meets. I say that, in explanation of what might appear to be neglect or omission on the part of the committee.

Chairman Lord: If there is any feeling of neglect, it simply was a misunderstanding. It has been the practice of the conference to recommend to the association matters of this kind, and unless there are further remarks, we will put the resolution to a vote.

Charles J. Tobin: I second the motion.

Chairman Lord: I think it was seconded.

(Ayes and noes)

Chairman Lord: It is unanimously adopted.

Secretary Holcomb: Mr. Chairman, I have two resolutions similar to the one just suggested. One of them relates to the committee on forestry taxation.

Resolved, that the National Tax Association be requested to continue its committee on forestry taxation and that such committee be requested to make a detailed study of the situation with regard to forest taxation in the several important timber-producing sections of the country, with a view to the preparation of a model tax law, or model tax laws, for submission to the next conference, and to formulate plans for financing and conducting this study and to present such plans to the executive committee of the National Tax Association, which shall have power to approve or disapprove such plans.

Captain White: I move the adoption of the resolution.

(Motion seconded)

Chairman Lord: Are there any remarks?

(No response)

Chairman Lord: All in favor of the adoption of the resolution signify by saying aye.

(Ayes and noes)

CHAIRMAN LORD: It is unanimously adopted. The Secretary has still another resolution, I think.

SECRETARY HOLCOMB: I have a resolution which I will attempt to explain in very brief form orally; it relates to the committee on inheritance taxation. I ought to say on behalf of the officers, who I know will appreciate my statement, how great a debt the association owes that committee. No committee in my experience in the association has worked so hard and so faithfully and so conscientiously, and at such personal and individual pressure and inconvenience and expense as that committee. Its report was submitted in the form of a model law. That really embodies the work of the committee, and supplemented by the oral remarks that were made by its chairman, will be treated as such in our record. It seems to me that this conference ought to give recognition to the great and arduous work of the members, and therefore I move that the report of the committee be accepted, with the sincere thanks of the conference and with its appreciation of the work of the members of that committee.

CAPTAIN WHITE: Motion seconded.

CHAIRMAN LORD: You have heard the motion, gentlemen; are there any remarks; are you ready for the question?

QUESTION: Has the resolution been read?

CHAIRMAN LORD: It is an oral statement, simply a vote of thanks for a very difficult piece of work on the part of the committee. All in favor of the motion will signify by saying aye.

(Ayes and noes)

CHAIRMAN LORD: It is unanimously adopted.

S. S. KALISHER of Pennsylvania: I rise for unanimous consent on a resolution.

CHAIRMAN LORD: Will you state the nature of it so that the conference may know what it is consenting to?

MR. KALISHER: I presented this resolution to the committee and am rather at a loss to understand the committee's inaction. It relates to net losses, with respect to state income taxes and franchise taxes based on income, as provided in the federal Revenue Act of 1921. Before reading the resolution I might remind you of what Dr. Adams has said; that the federal Government thought this a fair provision, and it was therefore incorporated in the federal act. I cannot understand why, it being fair with respect to federal income taxes, it should not be fair with respect to state income taxes. As I see it, certain states will be compelled to accept this provision, or follow the income tax law of 1921 *in toto*. North Carolina is in

that class, Massachusetts perhaps, with respect at least to corporations doing business in that state.

The resolution which I present reads as follows:

Whereas, the federal Revenue Act of 1921, Title II, Section 204, provides for the application of net losses of one year to the net income of other years, and

Whereas, radical changes in business conditions exist from year to year, affecting the income or loss thereof, and

Whereas, the justice of averaging incomes over a number of years has generally been recognized by legislatures and businessmen,

Be it Resolved, that this conference recommends that existing state income tax laws or franchise tax laws based on income be amended so as to provide, as far as practicable, the application of net losses of one year to the net income of other years, as provided in the federal Revenue Act of 1921.

HARRY P. SNEED of Louisiana: Mr. Chairman, on behalf of the resolutions committee, I wish to state that the reason why that resolution was not reported favorably by the committee was not because of any lack of merit in the resolution itself, but because the committee felt that the policy of this conference was to confine itself to matters of large moment, and we were of the opinion that the resolution was not of sufficient dignity to warrant adoption by the conference. I state this in justice to the committee and to explain to Mr. Kalisher why it was not reported.

CHAIRMAN LORD: Now, we will see; is there any objection to the introduction of this resolution at this time?

WALTER W. LAW, JR., of New York: I object to the introduction.

CHAIRMAN LORD: I think under the rules, inasmuch as this resolution has had the consideration of the committee on resolutions, and objection being made, we cannot entertain it.

CHARLES J. TOBIN: Perhaps the secretary can inform me as to whether the record is complete as concerns the existence of the committee on public utilities. As I understand it, in the reading of the report, there was to be a continuation of the work of that committee. Is it necessary that a resolution should be proposed here continuing the work of the committee, or is that a matter that automatically takes care of itself. It is my recollection that they did not finish their job, and as yet no resolution has been offered which keeps them.

CHAIRMAN LORD: I think I would entertain a resolution or suggestion of that kind from the conference to the association, unless there is objection.

SECRETARY HOLCOMB: I was not present at that particular session, but I understood that some such resolution was offered.

MR. TOBIN: It is my recollection, Mr. Holcomb, that there was something said about it; that is, they discussed it, and said that they wanted more time.

CHAIRMAN LORD: Is there objection to the introduction of such a resolution at this time?

NILS P. HAUGEN of Wisconsin: I believe the statement was made at the time of the consideration of this question before the conference that it would be desirable to continue the committee, and I as chairman stated that, if there was no objection, that would be the sense of the conference.

CHAIRMAN LORD: Mr. Whitney, can you advise us about the status of that committee?

FRANCIS N. WHITNEY of New York: Mr. President, I don't recall that a formal vote was taken. As Mr. Haugen has said, the matter was brought up, but whether the conference desires to recommend to the association that the committee be continued or not is, of course, for the conference to decide. Senator Davenport said, and I think we all understood, that we had not fully completed our report, and whether the committee, as it is now constituted, should continue, or another committee be appointed, to finish the work, I think is a matter for the conference to consider at this time.

CHAIRMAN LORD: Unless there is objection, the motion of Mr. Tobin will be entertained.

MR. TOBIN: I move, Mr. Chairman, that the conference recommend to the National Tax Association the continuation of the committee on public utilities.

(Motion seconded)

CHAIRMAN LORD: I presume that includes thanks for the work they have already done, as suggested by the secretary.

MR. TOBIN: I believe they deserve thanks, Mr. Chairman. I believe they have done their work well, and that we should extend to every member of the committee, as well as the chairman, the thanks of this conference. I offer that as part of my resolution.

WILLIAM BAILEY of Utah: I am thoroughly in favor of this motion. If I remember correctly, Mr. Link has already made that and it has been carried by the association.

CHAIRMAN LORD: It can do no harm to adopt it again.

(Ayes and noes)

CHAIRMAN LORD: It is unanimously adopted.

SECRETARY HOLCOMB: It seems to me that while we are doing these things, we ought to express appreciation of the work of the committee on migratory live stock; they have spent a lot of time, as have all the other committees; I think the work of that committee should be recognized, and that its report should be accepted with the sincere thanks of the conference.

CHAIRMAN LORD: You offer that as a motion?

SECRETARY HOLCOMB: Yes, sir.

(Motion seconded)

(Ayes and noes)

CHAIRMAN LORD: Unanimously adopted.

Now, is there any other motion that has been overlooked or forgotten?

CAPTAIN WHITE: I think a rising vote of thanks ought to be given to the committee on resolutions for their work.

(Motion seconded)

OSCAR LESER of Maryland: Can I say a word on that? I happened to be on the committee on resolutions, and I am going to vote against that motion. As a matter of policy I have always been opposed, in organizations to which I have belonged, to votes of thanks to members, for the simple reason that unless you do it in all cases, it becomes invidious in each case in which you omit it, and I therefore suggest that hereafter in our dragnet general resolution of thanks, we include all the committees.

CHAIRMAN LORD: This motion has been offered and seconded, and I think the chair will entertain it and put it.

(Ayes and noes)

CHAIRMAN LORD: The resolution appears to be adopted and the chair declares it adopted.

Now, gentlemen, we will listen to a paper by Mr. Howard of New York on the standardization of tax commission reports. It is a matter of some importance to commissions, and I am sure the paper will be instructive.

After Mr. Howard has completed the reading of that paper, we are going to have a short memorial service for our late friend Judge Howe, who has passed away since the last meeting of this conference.

Mr. Howard, we shall be glad to hear from you at this time.

STANDARDIZATION OF STATE TAX REPORTS

M. S. HOWARD
Statistician, New York Tax Commission

This is a discussion of a future standardized state tax report. Relative to present tax reports, I have only this to say: Some time ago a distinguished tax authority who has been retained by many legislative committees, after getting together the reports of various states to develop certain comparisons, stated that he was unable to use them. He also stated that when trying to use the data in a tax department's report, in conjunction with the data in the report of another department of the same state, he could not make use of either of them.

Tax problems have for some time been a matter of very lively interest. There are many tax authorities giving the major part of their time to their consideration, and in fact tax questions have become among the first problems of popular interest. Not merely are the people generally concerned as to the weight of taxation, but to a great degree they are intelligently desirous of having the fairest and most scientific tax systems adopted. The question arises: Are the facts relative to our systems of state and local taxation adequately presented? Are the figures sufficiently accurate? Are our tax authorities able to find out from the tax reports of the various states the things they want to know? Is this great interest in tax matters properly met by the information we are including in our annual reports?

If it is a fact that our compilation and reporting of tax facts is lagging away behind the interest in and importance of tax problems, how should we go about correcting the situation? How should we present our accumulating tax experience, so that our tax experts, i. e., the administrators, the legislators and the scientists can have the benefit of this experience, in correcting and improving our tax systems?

The following are tentatively offered as the logical order of the steps to be taken.

(1) The appointment by the National Tax Association and the American Statistical Association of committees to work together to develop a model form of report.

(2) As the field of American taxation is so large and so varied, the incorporation in this joint committee of the staff of some such organization as the National Bureau of Economic Research.

(3) With the offices and other facilities of such a staff available, the accumulation of the materials which show exactly how extensive is the field of information available to our tax commissions.

(4) A comprehensive tabulation or mapping-out of such available materials.

(5) The determination of what material should be developed annually by a state and what should be compiled only every other year, or less frequently.

(6) The drawing up of a series of tables for the states to compile, so far as they have the funds therefor, in the order they should be printed. The stub and column captions of each table should be specified so that in all cases where comparison between the states is desirable and possible, uniformity of presentation may be secured.

(7) In addition to recommending the order of printing, the committee should give its opinion as to the order of importance and as to the minimum information to be presented.

It goes without saying that the committee should know that the utmost benefit would be derived from their labors, by the heads of the various tax commissions undertaking in advance to have their recommendations carried out, so far as lies within their power.

The following are suggested as the sort of matters to which the committee would give its consideration.

The model form of report should have a complete series of table numbers so that those states that print only a small number of tables would nevertheless give the tables they did print the model-report table numbers. Although there might be many blank numbers in a given state's report, nevertheless the tables that were comparable for the various states would make that fact plainly known, by having identical numbers, so that any one desiring to use them for comparative purposes could do so with certainty and with economy of time.

A further word as to its form is worth while, although that may be much less important than its contents. The tax reports of the various states should be uniform in size of paper, in size of print, and in order of contents. This matter of uniformity of arrangement should increase the readiness with which they can be used: incidentally there is probably one best arrangement and all reports might as well follow that best.

The following are suggested as part of the contents and the order of contents:

(1) Title page
(2) Transmittal page
(3) Table of contents
(4) Report to the legislature from the commission, dealing with such matters as they see fit, as,
    (a) New features of administration
    (b) Economies

(c) Litigation
(d) New legislation
(e) Recommendations

(5) Summary tables or text tables with accompanying text. The accompanying text will probably usually be brief but should at least point out the degree of error or possibility of error in each table in the report.

One of the first summary tables should show the following:

(a) Amount of each tax collected (or levied)
(b) Total cost of collecting
(c) Cost per $100 of tax collected
(d) Total tax base, whether property or income
(e) Average tax rate for the state.

Where actual figures cannot be entered, the best estimates possible should be given, with footnotes showing the basis of estimate.

A second summary table should show by whom each tax is collected and the amount distributed to the state and to each class of locality, as county, city, etc.

As taxes are now so high and becoming so varied, another table should show the ultimate tax bases of the state, namely, its total wealth, its total income, and its total population, all subclassified as the committee may recommend, as realty, tangible personalty, intangibles, personal income, corporate income, etc. There would appear to be certain things relative to a state's wealth and income and taxable activities which should be known, even if a state's tax system, as at present constituted, did not show the need of such information for the successful administration of its present taxes.

(6) Following the summary and other text tables with their text discussion should come the basic tables.

(7) Index.

Another question for the committee to determine would be how far historical as well as current data should be given. For example, there should doubtless be one table to show the amount raised under each tax in the state each year since the adoption of the tax and another should give the county equalization rates to date.

The question whether the data reported should be on a cash-accrued or a cash-received basis should be settled. Certainly it should not be one for one tax, and the other for another, and on one basis in some states while on the other, in others.

One important service of the committee would be stating the reasons for compiling the data in each table. This is important, as many members of our state legislatures see no value in statistics

and the recommendations of a committee of such an association, backed by reasons which they could see, should be effective with many of them. The reasons supporting the compilation of some tables would be more purely administrative; whereas the reasons supporting the development of other information would be more exclusively scientific. One of the functions of the committee would be to determine how far the states should go in making available to the scientific world, the commercial world, and the public in general, the information which the newer taxes are piling up in the hands of our tax commissions.

The total tables that should be compiled, dealing with special situations in the various states, may be considerable. The committee could consider these particular matters, with a view to coordinating or distributing the field among the various states, to secure the largest amount of information of use to tax men, relative to these particular problems.

There are several theories relative to statistics, as developed by a large governmental body. One is that governmental agencies have exclusive powers of getting information in the discharge of their duties and that if statistics relative to the matters under their jurisdiction are not developed, a by-product, having a value of several or many times the additional cost of developing, is allowed to go to waste. Another theory is that statistics relative to the field covered are essential for proper administration. There is still another theory applicable to certain statistics; that the statistical information is in itself so important that the work of the governmental agency is principally or exclusively directed toward their compilation. Whether in any case some slight changes in a law or in existing regulations should be made, to round out an important body of information, is a question to which the committee could well give careful consideration. It would appear that the tax commissions are the logical bodies to assemble information relative to such economic facts as the amount of wealth, the size of income, their growth, their concentration, their diffusion, their rate of growth, their increasing or decreasing rate of concentration or diffusion. States that have the general property tax, the inheritance tax and the income tax, can answer a large number of such important questions.

All states have several departments. There is a border line of information, about which it is a question whether it should appear in a tax commission's report or in, say, a comptroller's report. The committee should draw this line. It is possible, of course, that certain data may well appear in different connections in different department's reports.

Then there is the fact that in various states the administration of various taxes is scattered around among various departments.

Any tax expert should be able to find in a single report the state's tax facts for a given year. However differently a state's functions may be distributed among various departments, the equivalent information should be found in the corresponding report for all the states. The committee might emphasize the need for action upon this proposition.

A great deal of the content of a tax report is taken from reports of agents or local officials. It would be a part of the ground to be covered by the committee to consider the form and content of these underlying report forms, with a view to making them as uniform, as complete and as simple as may be. This might be laborious but would appear to be essential.

It would be a fine thing when the committee had drawn up the form of a model state tax commission report, with their explanation of its features, for the money to be forthcoming so that for one of the states that has a complete set of the newer taxes, an actual model tax report could be compiled. Such an actual model should be complete in tables, footnotes and text, so as to serve as a complete guide for those states which might compile any corresponding data in the future. Such a report would be the great land mark in American tax statistics. It should be worth several times its cost, for the positive information given in itself. Also it should be worth several times its cost as the model.

Although tax officials often change, with changes of the party in power, if a model report was worked out and followed only once in a given state, the great probability is that it would be followed successively. Following a preceding year's report is following the path of least resistance, accordingly the committee's work could be considered permanent.

There is another interesting possibility connected with such a report. A tax department is only one of several departments. If the tax departments generally adopt a model report, it may stimulate the other departments, where they have not already done so, to follow the example of the tax department in developing model standard reports and lead much earlier than would otherwise be the case to an output of completely co-ordinated and scientific reports from our various state governments.

One feature in New York State reports, as they have been printed these last few years, gives occasion for another question. Those reports have been including a section entitled "Status of Taxation in Other States". This has been included at the desire of the commissioners and covers matters in which they have been more immediately interested. It gives a birdseye view of certain points and saves the time of digging up the information in the law reports. Such a compilation is well worth while and it would appear that it should be extended, but, if so, it would appear that

there is a much more economical way of managing it. Every once in a while some trust company, some legislative committee or other organization, or individual, works out a comparative statement for some one tax. Why cannot these efforts be co-ordinated, all the taxes distributed among those who care to undertake the labor and a book published for the whole field. When once developed, each state commission could each year easily revise the information relative to itself. In this way everybody could get the benefits of the efforts of each.

With the states accordingly, getting their tax data out in comparable form, the census or some other body could then compile a report of taxation in the various states and we should have two reports, giving the comparable data relative to our tax legislation and to the results achieved thereunder. The reporting of tax statistics in the United States would then be on a satisfactory basis.

The committee's original work should be followed up by their making annually a critical review of the year's annual tax reports, for publication in the *Bulletin* of the National Tax Association and the publication of the American Statistical Association. Such a review would serve as a continuing guide for each of the various states.

If the proposal here made should be generally followed it would go a long way toward making it possible to substitute on our library shelves, for books now dealing with economic theories, books dealing with economic facts. Our tax statistics would then be second only to our census statistics.

The content of our tax reports should not be determined by a single head or by an uncoordinated series of suggestions, but it should be determined by a group who will consider the whole field, from each of the various angles.

Mr. Howard continuing: It is my hope that this association will appoint a committee to take up this matter.

Walter W. Law, Jr., of New York: I want to inquire if the chair would entertain from me now a motion to appoint such a committee, or to recommend that the association appoint one?

Chairman Lord: Do you ask unanimous consent to offer such a resolution at this time?

Mr. Law: Yes.

Chairman Lord: Unanimous consent is asked by the gentleman from New York to introduce a resolution such as is suggested.

(Moved that it be granted)

(Motion seconded)

CHAIRMAN LORD: Is there objection?

(No response)

CHAIRMAN LORD: If there is no objection, you may present the resolution.

MR. LAW: I think it is a matter of a great deal of importance, and that it would be a simple matter for the states to prepare statistics along uniform lines; very much as railroads make their accounting returns on uniform lines, and I therefore move that the president of the association be requested to appoint such a committee, which will take the matter under advisement and report at a subsequent meeting.

(Motion seconded)

CHAIRMAN LORD: Are there any remarks?

(No response)

(Ayes and noes)

CHAIRMAN LORD: The ayes have it; the resolution is adopted.

We will now hold memorial exercises in memory of our esteemed ex-president, Judge Howe of Kansas, and I will call on Mr. Rowan of Kansas to speak first.

W. McD. ROWAN of Kansas: Mr. President and gentlemen of the convention. When Mr. Holcomb wrote me saying that, on account of my close association with Judge Howe, he would like me to make some remarks along the line just suggested, I wrote him that I would do the best I could. I am frank to say to you gentlemen, in the first place, that I am not a public speaker, and in the second place, that it comes very close home. I have prepared just a short address that I should like to read, which I hope will throw some sidelights on the Judge's life that you gentlemen who were associated with him in this convention have not probably known.

There is much that might be said when talking about a man of such force and character as the late Samuel T. Howe; but to this conference there is nothing that I can say that will make his memory any more dear to those of you who knew him and were associated with him. Some of you may not have been privileged to know him personally, but there are none connected with the National Tax Association but know of him and of his work as a member and as its onetime president. He was honored many times and in many ways, but I know how much he appreciated having been chosen by such men as you to be at the head of the National Tax Association, and he talked often of the men who did and now do take an active part in this work.

He was called Judge, and while he never was one, yet his dignity, integrity; his clean living, and bright mind made him the model character we want all judges to be. The name fitted him and was given him by all, save those who were entitled to wear the same button he wore; and they, his comrades, affectionately called him Sam.

I first became acquainted with Judge Howe when the tax commission was organized. I was the county clerk of a western Kansas county at that time, and as such, was brought in close connection with him, and I had known of him and his work as tax commissioner for a number of years. Three years ago I became associated with him on the commission, and each day of that association revealed some new and lovable trait. A cheery good-morning greeted you at the beginning of the day's work and a good-night, that savored of a benediction, was his parting.

His loyalty to his nation, his state, his friends, his family and his church was of that steadfast kind that knows no turning. He was as faithful to his duty as an officer of his state as he was as a soldier in the service of his nation. Eight o'clock each workday would find him at his desk. His only vacation was to attend a meeting such as this. The following summary of his activities will throw some sidelights upon his life and character.

Judge Howe was born in New York State, his parents moving to Ohio when he was quite young. He was but a boy when the war between the North and South began, but in spite of his youth he overcame objections and regulations and entered the Union army, serving until the close of the war, thus giving to his country the years he would otherwise have used in finishing his education. After leaving the army he learned the carpenter's trade and about 1870, when still a very young man, came to Kansas with a colony of Ohio people, under contract to erect some buildings for them in Leavenworth and Jefferson counties, which are located in eastern Kansas. After completing this contract, perhaps his active service in the army having the effect of making him restless, he decided to move on and, again under contract, he went to Marion county, somewhere near the central part of the state, and there today in the thriving little city of Florence stands a school building erected by him, not pretentious it is true, but so well built that it still stands and is used, while on each flank there has been erected a large and pretentious building to take care of the school needs of the growing town, but the work of Judge Howe's hands still remains.

It was in this county that he met the one woman and established his first home. His political life in Marion county shows what his people thought of him, for shortly after his settlement in that county he was elected sheriff, a job it took a real man to fill, for those were the days when every man wore his trousers in his boots

and carried a six-shooter and was more or less a law unto himself. Horse-stealing was a heinous crime and seldom was the thief permitted to get away. On several occasions, when making trips with him through the central and western parts of the state, Judge Howe would mention having in the early days hunted a desperado in this or that section of the state, and being pressed for the story would relate an interesting experience, but with his usual modesty he seldom mentioned his own part in the play. Though still a boy in years, he made an efficient peace officer.

In his home town of Marion there was a young man running a county newspaper and he and the Judge became fast friends. It was impossible for the Judge to be idle. His hands and mind must be occupied, so when the work in the office of the sheriff was slack he would set type in the office of his friend, and with his usual thoroughness he mastered the printer's trade. After serving two terms as sheriff, he was elected clerk of the district court, and again he made use of his spare time in reading law, and was admitted to the Bar and to practice before the supreme court, although he never was actively engaged in the practice of the profession. Then his neighbors looked around for a man to run the office of county treasurer and they selected Samuel T. Howe. While serving his second term in that office he was nominated by his party to the office of state treasurer, and was elected and re-elected, holding the office four years.

Then for several years his ability to do almost anything took him into other walks of life. He was a banker, a department manager for a large telephone company and at one time was a hard-rock mining operator in the lead and zinc mines in southeast Kansas.

In 1907 the young printer in Marion, Kansas, had become one of Kansas' noted governors and he named his friend of young manhood, Judge Howe, a member of the State Tax Commission, which office he held, regardless of change of administration, continuously until the time of his death. There was no mistake made when Governor Hoch selected him as a member of the State Tax Commission of Kansas, for he went to work with his usual zeal and ability, and in spite of the fact that Kansas was operating under the general property tax, with each county a law unto itself; with property being taken at a percentage of its value, when the statutes said actual value; when there was really no head to the department of assessment and taxation; when the board of equalization was a misnomer, and when, in short, everything was wrong; he and his colleagues brought order out of chaos, and it was largely due to Judge Howe's brilliant ability that order was attained. There are many laws on our statute books that redound to his honor and credit and to the benefit of his state.

His pride in his family was great and entirely justified, as they

are all worthy sons and daughters of such a father and mother, and I well remember how his face would light with pride when he spoke of his son, who wore the uniform of his country, serving with a combat division in France, the pride of a soldier father in his soldier son.

The law says on whose shoulders his mantle must be placed, but the man fitted to wear it with his dignity and to perform the duties entailed upon the wearer as he performed them is not yet found, and in my judgment it will be many years before such a man will make himself manifest. But we are thankful for his teaching and example, and each day we see something of his handiwork, and those of us who were permitted to know him and be with him have that God-given chain memory that links us with him in the great beyond. A more loyal citizen, a better friend or a more Christian gentleman never lived than Samuel T. Howe. We miss him—Kansas misses him.

CHAIRMAN LORD: I will call on Professor Bullock, one of the ex-presidents of the association, to add his tribute to the Judge's memory.

CHARLES J. BULLOCK of Massachusetts: Mr. President and ladies and gentlemen:

When this association was organized at Columbus, Ohio, in 1907, I suppose that there were very few of those who participated in the exercises of that conference who believed that the association would be permanent. I know that I at least, and most of my colleagues whom I knew best, went home feeling that that first meeting was probably the last, as had been the case of similar efforts made in times past to organize a national conference upon taxation. But somehow we had a second meeting, and then a third, and presently it appeared that the association was gradually becoming, in the first place, an educational center, and in the second place a common meeting-ground for the state tax officials who, up to that time, had had no opportunity to get together and meet each other, as the railroad commissioners, and insurance commissioners, and bank commissioners of the several states had for many years done.

As I look back over the history of this association, a few figures and faces and forms of some strong men, connected with state tax departments, come to my mind, as men who came to the front in those early, critical years, when this association had its troubles and difficulties; when it had not found itself; when every meeting that we held was marked by situations that can fairly be termed critical; and as I think of Judge Howe, and of the tax association, I think principally of the strong, gentle, wise, and friendly figure who appeared at our second meeting, and then at our third, and

then at all our meetings until our troubles were over, and we were safely embarked upon our present prosperous career.

To Judge Howe this association owes more than it owes to any other man, except Mr. Foote, our founder, and Mr. Holcomb, our secretary for so many years.

The second thing that comes to my mind this afternoon is my recollection of Judge Howe as a man. Somehow, when I was yet a young man, it was given to me to know that one of the most precious and valuable experiences of life was intimate contact with men my superiors in age, who were full of years well spent; full of experience; full of wisdom and sweetness and right, and it has been my good fortune to enjoy the intimate friendship of a number of such men, who have taken me—a much younger man—into their confidence, and, I think, too, into their hearts. Now, that is what Judge Howe did, very shortly after I met him, at our second meeting at Toronto; and I think this afternoon of him as a wise, gentle, lovable, and venerable friend. He gave me his friendship and his counsel, and words of wisdom, through all these years, and his passing leaves a great void in my life.

In the third place, I think of Judge Howe as one of those useful men that you find occasionally in states, whom the states fall back upon when they have difficult and responsible jobs to do, that they won't trust to any ordinary man in public life. We have some such in the association; it does not do to name them, so long as they are with us in the flesh, because they would not take such reference kindly; I am not going to name them, but Judge Howe was a man that everybody in Kansas trusted and fell back upon when in trouble.

I remember when our model tax committee met at Buck Hill Falls, two years ago. One afternoon we happened to mention the name of a certain venerable New York banker, and Judge Howe said, "I remember him; he helped me save or recover, for the state of Kansas, one or two hundred thousand dollars that we thought we had lost; some thirty years ago," and then he told me the story. It appears that a public official had gone wrong; that some money was likely to be lost, and that Judge Howe was selected as the man to go to New York and get it back, and he fell into the hands of this gentleman, who happens to be another of my venerable friends, and the gentleman showed him how to recover.

All his life long Judge Howe was a man on whom his state depended for peculiarly difficult and responsible work, that no ordinary man could be entrusted to perform. Judge Howe has gone, but he has not really left us. He lives in the Kansas Tax Commission, which he created; he lives in this association, to the survival of which in its early years of storm and trial, he contributed so much; and he lives in the hearts of all of us who knew him, and who will not soon forget our venerable friend.

CHAIRMAN LORD: I shall be glad to hear from anyone else who feels that he can add anything to the beautiful tributes that have already been paid to the Judge. I cannot let the matter pass without adding my own brief tribute. I can add nothing to the story of the Judge's life, as related by Mr. Rowan, nor can I add anything to the recital of the splendid service that the Judge rendered this association, so aptly presented by Professor Bullock, but in a little brief statement that I have prepared I want to express my appreciation. My feeling for Judge Howe is such that I dare not trust myself to speak extemporaneously.

To those of us who have attended many meetings of the conference, the absence of Judge Howe brings a feeling of sadness hard to dissipate. His engaging manners, his abounding optimism and ready sympathy won friends for him on every hand; and his quick perception, ripe and varied experience, and rare good judgment made him one of the most useful members the National Tax Association ever had.

He was president of the association two terms and would have been the unanimous choice for a third had he been willing to accept, but he declined the unusual honor, wisely maintaining that in an association like this the honor should be passed on each year.

I have read that in the Koran it is said "When a man dies they who survive him ask what property he left behind; but the angel, the messenger from Heaven, who bends over the dying man, asks what good deeds he has sent before, what useful things performed," and friends, the life of Judge Howe was filled to overflowing with good and useful deeds. As a member of this association he played well his part, and the things he did for its upbuilding and for the cause of tax reform will be long remembered. He will be sadly missed as long as any who knew him attend these meetings.

O. D. FOSTER of Kansas: I want very briefly to express my appreciation of the privilege of having known and been associated for the last eight years with Judge Howe.

The legislature met in 1913 and I became a member of its committee on assessment and taxation. Later during the sessions of 1917, 1919, the special session of 1920, and the session of 1921, I was chairman of the committee on assessment and taxation, and we met daily in the hearing room of the State Tax Commission. It was my privilege and my pleasure, very often during my service in the legislature, to avail myself of the splendid counsel of Judge Howe. He was always keenly interested in matters pertaining to taxation, and I have never known a man who had a keener, more analytical insight into taxation matters, both state and national. He was a man of very broad, general information, aside from his special interest in the matter of taxation. He was a man that one had to know well, in order to have the proper conception of his real

disposition. There never was anything even suggesting frivolity in his nature, and yet, on the other hand, there never was anything suggesting a grouch.

Judge Howe, I think perhaps, got his title of "Judge," from his judicial aspect; the way that he met people, and the way he handled problems that came to him for solution. There isn't a man, I am sure, in the State of Kansas that has the ability of Judge Howe to handle matters in connection with the administration of the tax laws of the state. The Kansas Tax Commission, I believe, has been frequently referred to as a model tax commission. Whatever superior aspects the commission may have are due entirely to Judge Howe's ability as an organizer and as an administrative officer. He took charge of the work at the time when the tax commission was first created, in 1907. He organized the force and was entirely responsible for all of the work of the commission.

His death, in my judgment, is a distinct loss to everybody in the United States who is interested in tax reform, and we people who were associated with him in that field feel very keenly the loss of his valuable counsel; in addition to that, we feel that we have lost a true, real, genuine friend.

GEORGE VAUGHAN of Arkansas: Gentlemen of the association: I feel constrained to add a few words of appreciation, as one of Judge Howe's friends, living in a neighboring state. In this connection I am reminded of the benefit we receive from our association together in an organization of this kind. It is not altogether of an intellectual nature, or as a training for the mind, but also as training for the heart.

In the ten years that I have been connected with this association I have made some fast friends; I have met men whom I have learned to admire, not particularly for what they told me, but for their conduct and their careers as exemplified by their walk before my eyes. Somebody has said that "duty" is the sublimest word in the English language, and I think of that word as most fitting in connection with Judge Howe. Those of us who knew him, know that his talents and his qualities of mind were of a very superior nature. They would have enabled him to have attained great pecuniary success in any calling that might have won his affection, but instead of devoting himself to the accumulation of wealth, he preferred to discharge public duty to the commonwealth, and by qualifying himself and giving his service lavishly in that direction, he has left a monument greater than any wealth that could have been counted in dollars. Someone has written lines that run like this:

> "Life is a leaf of paper white,
> On which each one of us may write
> His word or two,
> And then comes night."

Judge Howe has left a record that it is easy for us, as tax men, to read and one which it behooves us all to emulate.

C. P. LINK of Colorado: As another neighbor of Judge Howe on the West, I simply want to add my little tribute. It was my splendid fortune to know Judge Howe as an official and then as a friend. As an official his career has been well covered; let it be said that no more able, fearless, and loyal official or citizen ever lived. As a friend, no truer ever lived. As a helper to those of us in the West, we shall never again have his equal.

As has been stated, Kansas was one of the first to get a real centralized tax body. For the entire life of that Kansas Tax Commission, with Judge Howe at its head, the entire West had a close and splendid friend and helper. He was a real man.

CHAIRMAN LORD: There are on the program certain topics suggested for future work of the association.

CHARLES J. TOBIN of New York: I should like to make a motion that when this conference adjourns, it adjourn out of respect to Judge Howe; to express its appreciation of the work that Judge Howe accomplished for the National Tax Association and for the various conferences that have been held; and also out of regard for the memory of a real man.

CHAIRMAN LORD: I think the chair will entertain this motion, and we will declare it adopted without a formal vote. I know it is the sense of everyone here present.

We have a little time now at our disposal before the hour of adjournment, to consider a few things on the program—methods of securing greater uniformity in taxation among states. Is there anyone here who desires to be heard upon that topic?

(No response)

CHAIRMAN LORD: Gasoline and motor vehicle taxation; are there any suggestions in regard to that, looking to the future?

JOHN E. BRINDLEY: I haven't any suggestions to make, but I have two questions to ask. That is a problem with us just now. One question is where a state has heavy motor vehicle taxation on cars, is it advisable to add an additional tax on gasoline as a supplementary tax? If there are any opinions on that question, I should appreciate them.

C. P. LINK of Colorado: That question is of vital importance in all states. In working with the businessmen's committee of Colorado during the last few months, we have found it vital. My feeling is that automobiles should be taxed upon a property valuation, like real estate and other tangible personal property, and that in addition they should pay a substantial license tax, as vehicles, and,

of course, that the gasoline tax is proper — and I might add that Colorado has a one-cent-a-gallon tax. The motor vehicle users should pay that tax, the same as other vehicle users.

Automobiles represent tax-paying ability, and a vehicle license is a splendid tax. I am generally opposed to special small taxes, but I regard the automobile vehicle license tax as a marked exception, particularly in view of the fact that it is paid by an instrument that uses and wears out roads and that the funds go directly into good road programs.

J. E. Walker of Montana: We have a gasoline tax in the state of Montana, and we feel that the justice of this tax is particularly due to the fact that we are a very large state. We have thousands and thousands of miles of roads, and we haven't very much revenue to keep them up. We feel that the justice of the gasoline tax is that to a great extent those who wear out our roads—dig them up—are helping to pay to keep them in repair.

Our state is 750 miles east to west, and about 450 miles north and south, and we only have about as many people as you have here in Minneapolis, and an assessed valuation of half a billion dollars, so you see that we are short on people and short on finances, but we are long on roads, and we have to get some method of keeping them going.

Mr. Link: I overlooked an important point; we found, upon careful examination, that you cannot possibly get a license tax high enough to take the place of the property tax. For instance, in Denver, Colorado Springs, and in our average towns and cities, the rates are running from thirty to forty mills, which means that a car assessed at $2,000 would pay from $60 to $80 a year. When we came to talk about automobiles, the first idea was to get a license tax high enough to take that up, but we never in the world can tolerate a license tax that will equal the total we are getting from a property and license tax combined.

William Bailey of Utah: I am afraid that if we are not careful we will carry this thing to extremes. After going into the matter very thoroughly in my state with Dr. Bullock last month and getting statistics throughout the state, we find that this question of the *ad valorem* tax is more or less of a farce. It varies materially in different counties where they are assessing this property, so that it appears to me that you can reach the automobile for all that it ought to pay in the license tax and the gasoline tax.

The automobile association of Salt Lake City came in with a lot of statistics and made the statement that a tax on gasoline would not raise the price of gasoline, because, as they claimed, the oil companies get out of the community all that they possibly can anyway—all the traffic will stand, and they really, to a greater or less

extent, will absorb the tax. It is a pretty hard matter to value an automobile. Men buy automobiles on time, and after the owner has run around the city on the hard roads and out in the country a year or two, to judge what a machine is worth takes a pretty good man. Strange as it may seem, in my state they average from $150 in some counties to $750 in others. An ordinary county assessor, in the Western states at least, unless he is more intelligent than ours, cannot value an automobile, and therefore it appears to me that to apply a tax to gasoline is more just than to try to apply the *ad valorem* tax to the automobile.

If you have all three, it seems to me that you are just a little bit overdoing it. I think, my friends, on this question of taxation, that we must go along carefully, and not endeavor to get out of any class of property every dollar you can extract. We want to be just in these things.

The reason I am kicking against Link is because I know him so well, and know that he won't take offense. Before you apply the three taxes, you must first ascertain what an automobile can pay and what is fair, and then you might divide that amount among the three taxes if you want to, but it appears to me that the better plan is to use the license and the gasoline tax.

Harry P. Sneed of Louisiana: After a steady experience in endeavoring to collect *ad valorem* taxes on automobiles, since the machine was first invented, I am thoroughly of the opinion that Mr. Bailey has expressed; that an *ad valorem* tax on the automobile is undesirable, because of the difficulty and, in many cases, the impossibility of collection. There have been formed lately numbers of loaning companies who loan money on chattel mortgages on automobiles. A young chap will amass about $60 of perfectly negotiable currency and possess himself of a Ford, in time to have it listed on the assessment roll. Before those taxes mature, he will have failed to make the succeeding payments, and that Ford will have been taken over by the money-lending company, and the tax still lies against the man who bought the Ford, with no means in the world of collecting the $1.80 tax that he owes on it. It has been my experience that the expense of collection of *ad valorem* taxes on automobiles is very much greater than the amount of taxes collected. To make up for that loss of the *ad valorem* taxes, of course either a gasoline tax or an increased license should be demanded. I prefer the license, because it seems to me that better statistics and better records for the laying of that tax can be gathered and kept than for laying a tax upon gasoline.

Thomas S. Adams: I want to ask the gentlemen representing the states in which a gasoline tax is applied if this tax applies to gasoline sold for farm tractors or similar purposes.

MR. LINK: It does not in Colorado, Dr. Adams; I am sure farm tractors are excepted. The tax is designed to cover the gasoline consumed by road vehicles only.

DR. ADAMS: It applies to trucks, though, as well as automobiles?

MR. LINK: Yes, sir.

DR. ADAMS: But in these other states I understand it does apply to automobiles sold for farm tractors.

O. CARLSTROM of Illinois: I should hate to have any more taxes imposed on us in Illinois, in the matter of automobiles. We have a license tax of eight, twelve, twenty and twenty-five dollars, based upon horsepower; eight dollars annually for a machine where the horsepower is not in excess of 25; $12 for 25 to 35; $20 for 35 to 50, and $25 over 50 horsepower. There is a special provision for truck licenses. In addition to the license fee, which realizes for the state of Illinois approximately $7,000,000, we are taxed on the *ad valorem* basis, at whatever value they determine the automobile to be worth. I realize that it is a difficult matter to determine the valuation of a secondhand automobile or a used automobile, but if a tax on gasoline were imposed on top of that, it would seem to us in Illinois who own cars to be rather unfair. I challenge the statement that the pleasure vehicle is the vehicle that wears the roads to pieces. The vehicle that uses up the roads is the heavy truck and the passenger vehicle operated for profit. This point involves the question of whether transportation may not have to be taxed in connection with the expense of repairing and building roads. We require street railway companies and railroad companies to build and maintain their own separate rights-of-way; to fence and otherwise improve and repair their roadways, yet the taxpayer builds a roadway, permanent and stable, over which vehicles carrying freight and passengers may be operated for profit without cost. That sort of a machine, it seems to me, operated for profit, upon highways built at public expense, should be made to bear its reasonable, relative proportion of the cost of the maintenance of those roads, so that it would be put on a fair basis, in competition with other transportation methods. Our experience in Illinois, with a $60,000,000 bond issue for roads, running over a period of twenty years, is that the automobile license fees will pay that and pay another $60,000,000—at least $40,000,000 more in the twenty years. So we feel that the pleasure vehicles of Illinois are being taxed about all they should be taxed. I don't think it is the pleasure vehicle that wears out the roads; it is the truck and the passenger car operated for profit.

OSCAR LESER of Maryland: At the first session there was a paper on legislation of 1922, which omitted to refer to the fact that in

Maryland a law was passed this year imposing a tax of one cent a gallon on gasoline. I hope that some note will be taken of that in that paper.

Now, on the valuation of automobiles, we have had quite a good deal of experience with that in our state; particularly in the city of Baltimore. Years ago we hit upon a plan of taking the list price and using an arbitrary percentage for the first year, and also a percentage for the next year. We took two-thirds of the cost price the first year, three-fifths for the second year, one-half for the third year, and after that it was a question of proof. Usually it remained at one-half, until the parties came in and showed that that was an improper standard. The same rule was applied to used cars. It did not matter how many hands a car might have passed through; it was a question of the age of the car and not the length of ownership by any particular person, so that if I bought a used car, which was in its second year, I came in the sixty per cent bracket.

This question of imposing an automobile license tax in lieu of a property tax, which of course would mean an absolute certainty in the collection of the tax, is not novel or untried, and I think it would be interesting to hear from Mr. Law of New York, whose commission administers the automobile tax law. Under the New York law that tax is imposed and the tax is apportioned in part back to the localities.

Walter W. Law of New York: We have just a license fee in New York, which brings in between twelve and thirteen million dollars. The tax is administered by the tax commission. One quarter of the receipts go to the county in which the owner is domiciled. The tax is distributed by the tax commission and paid to the county treasurers. It is not enough. We have about one million machines in the state; that means between twelve and thirteen dollars a machine. Some of us believe that the fairest tax for an automobile, supplementing a license fee, which I think should always be imposed, is a gasoline tax.

There are several very obvious reasons for that. If you have a machine in storage, that machine is paying its license tax, but does not pay any gasoline tax. Then again, I thoroughly believe, as Mr. Carlstrom says, that we have a very unequal situation as between the railways and the trolley lines, who are paying taxes on their right-of-way, and the Ford trucks and the jitney lines, which are competing with them; using the right-of-way that is maintained by the public, towards the expense of which the railroads and trolley companies contribute. It is not fair, and a gasoline tax would be one step in the direction of equalizing that present inequality.

We have figured it out pretty carefully, and believe that a cent a gallon tax would bring in about $450,000 a year in our state. Of course, it is not necessary to restrict it to one cent. If the conditions are such that it is thought wise, it can be made more than that. Then, that tax bears more heavily on the pleasure machine that scorches, also the very heavy pleasure cars will pay more than the Ford; and of course the heavy trucks and jitneys will pay in proportion.

There is another point, referred to by the gentleman from Montana; that the visitor who comes through your state, and whose domestic license you recognize, would contribute something towards the upkeep of the roads which he enjoys; on the other hand, when you visit another state, you leave something in the public till, as a mark of gratitude for the hospitality which you have received from it, which is no more than fair.

JOHN E. BRINDLEY of Iowa: Pardon me for rising again, but I have a question. Are there any states that use the gasoline tax for any purpose other than for the benefit of the public highway? Is it used for the general fund in any state?

MR. LAW: I made a slip of the tongue. I said that that figure of a cent a gallon in New York would bring in about $450,000. I should have said four and one-half million dollars.

C. J. BUELL: May I ask Mr. Law a question. Would your one cent a gallon apply on all gasoline sold in the state?

MR. LAW: Yes, sir, for any purpose whatever. That was our plan. Of course the farmers of New York use a large amount of gasoline on their farms, which is used in machinery that has nothing to do with the highways whatever. There is also a large amount of gasoline used in gasoline engines in industry that has nothing to do with the highways. The farmer also uses an automobile on the highway, but it is a very different proposition to the farmer from what it is to the ordinary pleasure automobile. The farmer's automobile, when he uses it on the highways, is being used in his business as a farmer mostly, and not for pleasure purposes. He takes his machine and goes to town on business and not for pleasure. Those are questions which you would have to work out in some way which enter into the proper gasoline tax.

The point is a very good one and we have considered very carefully the amount that would be contributed by farmers, and tractor engines are of course an element there. They would be proportionally a small element; I have forgotten the figures, but we made an estimate of that item. We figure, however, that while there is some reason for omitting that item, and some reason for omitting the item of gasoline used in the arts, that is, in tailor shops and so

on, the danger of inaccuracy and the difficulty of administration—because that gasoline is bought from the same pumps as the other—the difficulty of keeping an accurate track of the thing would more than offset the inequality that would result in taxing the whole business.

MR. LESER: I am not surprised at Mr. Law, well-dressed as he is, referring to tailor shops as an art, but I am surprised at his assumption that the farmer never goes on the roads for pleasure and that the city man never uses the roads for business.

MR. LAW: I think the answer to that is obvious.

O. D. FOSTER of Kansas: I very much dislike to see any policy adopted that would discourage people from riding in automobiles. In Kansas we have no gasoline tax. Our automobiles are taxed as personal property, and in addition to that we have a license tax, a minimum license fee of $8, and graduated fees, according to the weight and horsepower of the car, running up, I believe, to about $22. The tax collected on the assessment of the automobile as personal property goes into the general fund, like all other taxes. The license tax is divided into three parts; fifty cents goes to the state, for the license tag, $4.50 to the road drag fund, and the remainder to the state aid road fund. All of the license tax, except that fifty cents that goes to pay for the license tag, goes into two separate funds and is expended entirely on the roads of Kansas. The law pertaining to the license fee is administered by the secretary of state. The tax is apportioned back to the district—county and township—where the automobile is used. Of course, our road problems in Kansas are not so complicated as they are in some other states, our state being fairly level, and a good portion of it being dry, where dirt roads are considered good enough, if they are properly dragged. The law has worked very nicely in Kansas. As far as I know, there is no agitation for a gasoline tax, and I don't anticipate that one will be enacted very soon. I am not prepared with definite figures as to just how much money we raise each year and put into our two separate road funds, but it is a considerable amount, and in the western part of our state, where I live, it is ample to take care of all of our road work.

CHAIRMAN LORD: If there is nothing more to be said about gasoline taxes, we might take up the growth of exemptions or the American school tax problem. We have eight minutes we might devote to the subject, if anyone has anything to offer; first, the growth of exemptions. It is a pretty vital question.

H. C. MCKENZIE: There is one word I should like to say on the question of the American school tax problem, and that is the relative service that the pupils who live in the country get in the way

of schools, as compared with the service rendered to the children in the city. In the state where I live the rate of school tax in the country district is about as high as it is in the larger cities. In the cities they have not only schools up to the eighth grade, but high schools, and there is even a demand now that the state should pay the cost of putting the pupils through college, or through a university. In the country, if we get as much as the eighth grade, we think we are very fortunate. The country schools, as a rule, in the state of New York, are in a very unsatisfactory condition. We have had in our state, during the last two years, a committee which has been studying that question and which has recently rendered a report, and one of the things that that report contains is a recommendation that our school laws be so changed that the appropriation of state moneys be based not on the amount of taxable property in the school district, but on several other factors; first, that the school district be itself compelled to pay a reasonable amount of school taxes, and that in addition the moneys from the state be apportioned in inverse proportion to the amount of taxable property in the district. That is going to help out in several ways. Another thing that the committee has proposed is that special allowances be made to teachers having special qualifications, who will go into the rural districts and stay there and teach. The proposition submitted by the committee was that each teacher who has such qualifications, shall receive from the state an additional grant of $20 per month salary. These things are going to help the rural schools. It is the opinion of the committee that failure to keep up the average intelligence of the community and the average efficiency of our rural schools, will constitute one of the greatest menaces of our American republic. Always heretofore the rural population has been the backbone of our country, and if we allow the rural intelligence to degenerate, our whole country will degenerate in proportion.

Mr. Leser: There is a better device to encourage the efficient assessment of real estate. Suppose it were the rule to appropriate school moneys in inverse ratio to assessable value.

Mr. Buell: I don't know whether the gentlemen present would care to have pointed out a few of the very important exemptions from taxation which we enjoy in Minnesota, but possibly it might be enlightening. Up to the present time, for instance, the people who own mineral lands within the state, nearly all of them, or a large number being non-residents, have been absolutely exempted from any taxation upon a net clean-up annually of from sixty to eighty millions of dollars, out of which they have paid nothing whatever to the state. Of course, they paid to the federal government but not to Minnesota. A bill passed at the last session will

probably take about four millions out of that exemption and put it into the state treasury, but it leaves a pretty large exemption yet. The mining royalties in Minnesota, if I am correctly informed, amount in normal years to something like $16,000,000 — if I am wrong, Mr. Lord will correct me, and if he does not correct me, I shall assume I am pretty near right. I shall have to confess that I cannot tell you exactly how much they are and I hesitate to make a statement of it, without knowing definitely; I haven't the figures in mind.

CHAIRMAN LORD: Probably $16,000,000 a year is a conservative statement.

MR. BUELL: That is in normal times. Out of that the state has never yet received a cent. The royalty factor has thus far gotten away absolutely, without paying a cent of tax to the state or any locality. I reckon the next senate is going to act on that proposition, because most of the senators who voted against it are not going back. Then there are certain other exemptions. Here in the city it happens that the people who own the land under this hotel are collecting — my recollection is — something like $32,000 a year. Maybe I am mistaken about that, but it is somewhere around there. This is net ground rental, upon which they pay neither the city of Minneapolis nor the state a cent of tax. The people who own the Glass block at Nicolet and Sixth are receiving pretty close to $240,000 a year net ground rental, upon which they don't pay the state a cent of tax, or the city of Minneapolis, so they get away with $240,000 which is absolutely exempt from taxation of any kind. Of course, if we had an income tax we might get a little out of that—probably we should. If we had the New York law relating to taxation of ground rents, which we tried to pass at the last session, we should get a little of it. That bill will be introduced again at the next session and may pass.

The Plymouth building is in the same fix; gathering in the unearned increment and paying not a cent of tax. It is the same way with a large part of our downtown valuable business property, both in Minneapolis and St. Paul. That net ground rental does not pay a cent of taxes to the municipality or the state; that is a clean exemption.

Those are some of the exemptions that have been bothering me. I confess that they look to me bigger than some of the little picayune exemptions we have that amount to $150 or $200, or something of that sort.

CHAIRMAN LORD: Gentlemen of the conference: The hour has arrived when, in pursuance to the resolution offered by Mr. Tobin of New York, the conference will finally adjourn.

CHARLES J. TOBIN: I suggest a rising vote on that resolution.

CHAIRMAN LORD: As the unanimous expression of this conference, and out of respect for the memory of Judge Howe, I declare this conference adjourned, *sine die*.

The national tax association will hold its meeting immediately. I want, before the association is called definitely to order, to thank the delegates attending this conference for the considerate way in which thy have treated me, and I do thank you.

(Adjournment of Conference)

ANNUAL MEETING OF THE NATIONAL TAX ASSOCIATION

PRESIDENT LORD: The national tax association will now be in order.

I presume at this time that one of the first things that should be attended to is the report of our secretary and treasurer. We want to know what has become of our funds. Will you give an account of yourself, Mr. Holcomb?

SECRETARY HOLCOMB: Mr. President, I realize how much need there is for speed, hence I will merely give the very slightest review.

PRESIDENT LORD: Unless otherwise ordered by the association, Mr. Holcomb will confine himself to reading a summary of the financial condition of our association.

(No response)

SECRETARY HOLCOMB: As you all know, our progress is slow and not spectacular. It has been our main purpose to make progress slowly, and we have not attempted by any unusual methods to stimulate support for this work. I feel that we differ in this respect from a great many bodies in this country that are out seeking the support and contribution of their fellow citizens for some civic improvement. We could, I suppose, if we felt it necessary or proper, readily secure any amount of funds, but I am afraid that you would have to find some other treasurer to carry on such work. I should not feel any interest in anything that would border on the gymnastics of progress and reform of that character. If we cannot proceed steadily and slowly and surely, the thing has no interest to me, and I think that the matter has so impressed itself upon you.

These figures that I give are merely the routine figures of the receipts and show about normal receipts for the year.

(Reads financial statistics)

SECRETARY HOLCOMB (continuing): Our progress in membership is conservative. We cannot expect to make any great advance in membership, because we proceed slowly. We gained a hundred and lost eighty, and that is about the way it goes. We started the year with 1076 members, gained 109 new members, lost 82 members, leaving 1103, a gain during the year of some twenty members. The influence of the association is not altogether reflected by the number of members. Of course, I come in so close contact with the work that I think I appreciate the influence of the association much more than you. I have constant contact with people all over the world. The influence of the association is such that from Japan, China, Italy, Portugal, India, all over the United States and Canada, I am continually in correspondence with people who want to know where they can find material on taxation subjects. I don't feel at all discouraged because the membership growth is slow. Unless there are questions, I don't think that I can add anything.

PRESIDENT LORD: Well, it is evident that we are not bankrupt. I heard today that when the treasurer of this association took up his duties, we were in a condition of bankruptcy, and he has brought our finances to their present high estate. What will you do with the report?

DOUGLAS SUTHERLAND of Illinois: I move that the report be accepted and the meeting express its appreciation of the high character of the service given by the secretary.

(Motion seconded)

(Call for rising vote)

(Motion carried)

(Rising vote)

SECRETARY HOLCOMB: I thank you.

PRESIDENT LORD: I think the next order of business will be the consideration of invitations from cities for the meeting of the next conference.

We will now listen to anyone who cares to extend an invitation.

(An invitation was extended to the association by Mr. G. C. Hanna of New Mexico, to hold the National Tax Conference for 1923 at the city of Santa Fe, New Mexico. Mr. Frank B. Jess of New Jersey extended a similar invitation on behalf of the state of New Jersey to hold the 1923 conference at Atlantic City.)

PRESIDENT LORD: The secretary has a few invitations.

SECRETARY HOLCOMB: (Announces the different states and cities from which invitations have been received for the 1923 conference)

L. W. Donley of Winnipeg, Canada: (Extends invitation to hold the 1923 conference at Winnipeg)

Secretary Holcomb: Mr. J. T. White desired the secretary to announce that if we desire to go to Canada, he would be very glad to make suitable arrangements at either Toronto, Ottawa, Montreal, or Quebec.

Are there any suggestions with reference to the time? Would it be better to have it a little later or earlier? I don't know whether it is possible to get any expressions on that. There are two or three states now which never can attend during September. Of course, if we had it in August there would be a lot of states which could not be represented. I wonder if there is any week or any month that would be unanimously feasible.

President Lord: We discovered, a good many years ago, that generally, so far as officials are concerned, a later date than we usually hold these conferences would be more desirable. It is certainly true of Minnesota, and I think it is true of a large number of the states, but it seems that it is difficult for the university people to get away at a much later time. Am I right about that, Dr. Bullock?

Charles J. Bullock: That is true. The universities ordinarily get to work around the first of October. It is very difficult for university men to get away during that week, and I believe it has been looked upon that October and November were not good months.

President Lord: There may be something to be said in favor of holding the meeting in December. Prior to the first Tuesday in November men who are candidates for the legislature are so busily engaged in seeking office that they have little time to attend a conference such as we hold, but it has occurred to me that if a conference could be held in December where the legislature convenes in January, we might have a very large attendance of men who are about to enter upon the task of law-making, and if they attended a conference they might enter upon their duties with many worthwhile impressions they picked up at the conference fresh upon their minds. So there might be some virtue in holding the conference in December. That is just a suggestion.

The next thing in order before the association is the report of the nominating committee. I will recognize Dr. Bullock, the chairman of that committee.

Professor Bullock: Mr. Chairman, the nominating committee unanimously recommends the following list of officers for the year 1922-1923. Shall I read them all or take them one at a time?

PRESIDENT LORD: I think that they might all be read at the same time; that has been our usual custom.

PROFESSOR BULLOCK: Mr. Chairman, for president the committee nominates Professor Thomas S. Adams of Connecticut.

For vice-president, Mr. William Bailey, of Utah.

For secretary-treasurer, Mr. A. E. Holcomb, of New York.

For members of the executive committee, to replace the three members retiring this year; I merely wish to point out they were selected with a view to making the representation as well spread geographically as possible: first vacancy, C. J. Tobin, of New York; second vacancy, J. Vaughn Gary, of Virginia; third vacancy, H. L. Eveland, of South Dakota.

PRESIDENT LORD: Are there any suggestions as to the manner of election?

DOUGLAS SUTHERLAND of Illinois: I move that the secretary be instructed to cast the unanimous ballot of the meeting for each of the gentlemen named by the nominating committee.

PRESIDENT LORD: Is there a second?

(Motion seconded)

(Ayes and noes)

PRESIDENT LORD: The nominees presented by the committee are the unanimous choice of the association for the ensuing year, and I direct the secretary to cast the vote of this association for each of them.

SECRETARY HOLCOMB: I do so under duress, with respect to the secretary.

PRESIDENT LORD: The qualification is accepted. I wonder if Dr. Adams is here.

I will appoint Dr. Bullock, Governor Hagerman and Senator Van Alstine of Iowa as a committee of three to escort the president to the chair for installation.

(After some search, the president-elect, Dr. Adams, could not be found)

PROFESSOR BULLOCK: The president appears to have gone off to hunt for an excess modesty tax, because he is not to be found.

PRESIDENT LORD: Have you made a diligent search, Dr. Bullock?

PROFESSOR BULLOCK: Owing to the amendment of the federal constitution, there is no longer any place where one can be almost certain to find missing taxation. They are hunting for him.

PRESIDENT LORD: I hope he may be here to take over these duties.

PROFESSOR BULLOCK: The committee reports that Professor Adams is not registered at this hotel. He hangs his hat up here, we understand, and he is here unless he has left bareheaded.

PRESIDENT LORD: In the absence of the president-elect, I think that I will turn the meeting over to the vice-president-elect for the time being. Mr. Bailey, will you come forward.

(William Bailey, of Utah, steps to the platform)

PRESIDENT LORD: It is a real pleasure for me, gentlemen, to turn the affairs of this association over to Professor Adams and Mr. Bailey. I am sure that the officers elected are the choice of everyone here, and I can assure you, from my knowledge and acquaintance with them, that they will give a splendid account of themselves.

WILLIAM BAILEY of Utah: Ladies and gentlemen: It affords me a lot of pleasure at this time to stand before you in this capacity I have been very much interested in the work of this association since 1913 and have attended all the gatherings since that date. Utah has been well represented each year, and this year we have fifteen delegates here in this convention. We have learned that by getting together we can absorb much from you that is beneficial to us, and I know that our state has been benefited greatly by coming to these conferences. I have felt or have learned to love, if you will, many of the members of this association, through coming in contact with them; their splendid spirit and willingness to impart to us who are trotting along, as it were, has brought me close to them. I want to say at this time, that among those was our friend Judge Howe. I have been sad during this entire conference because I have missed the face of that most splendid man. I recall today a statement that he made to me a year ago. He said, "Mr. Bailey, you are next, or should be next year, and I am going to use my influence for you to be our next vice-president." That had gone from my mind until today. When we were speaking of Judge Howe I remembered his words. He was a splendid man, and many times I have sat down with him and discussed questions of taxation, to my great benefit.

There are a number of men of this character in this organization, and I have looked back and counted some of them who are not with us today, such as Lawson Purdy and Mr. Galloway, and a lot of men of that character, who are not coming any more. Then, too, I remember that stalwart who did do so much for this organization, Allen Ripley Foote.

I had a very pleasant visit with Mr. Foote in Salt Lake City. I took him out to the lake, floated around with him in the salty brine and enjoyed myself most splendidly. I feasted upon the good

things he gave me, from that splendid mind that he had, along the lines of taxation; and I have wondered sometimes what the future of this organization will be when a few more of those old stalwarts drop by the wayside and cease coming to these conferences, or go the road of our friend Judge Howe.

When I see the splendid gathering that is here today and that has been here during this week, and the splendid interest that has been taken in these matters, there is no question about the future of the National Tax Association. It will go on and grow, and it will do a wonderful lot of good in the communities.

I know that our friend Holcomb, who is the backbone of the organization, sometimes gets discouraged, but if he will look around and see the enormous lot of good he is doing, and what this association is accomplishing, I am sure he will take fresh courage and go on, as will all the members of this organization. And we owe much to our friend Bullock, who is our adviser, from year to year, in many of these things; and I am also proud of the fact that our friend "Tommy" is now our president, and I assure you, my friends, I shall give him all the support my intellect will permit, in making this organization what it has been and what it is destined to be.

I cannot refrain at this time too, my friends, from mentioning the very splendid treatment that we have had in this city from this splendid committee that have put themselves out so much for our entertainment. They certainly have made us feel at home. It is really worth while to leave your busy life at home and come to cities of this kind and be treated as we have been treated during this week. I commend the people of this city and I assure you that I shall carry off into the far West a regard for the city of Minneapolis and praise for the very splendid meeting that they have given us.

I have had for several years a dream of what this association should accomplish. It was very splendid today when our treasurer read about the bonds that we own and about the financial standing of this association. I had a dream that we ought to wage a campaign at this time that will give us a foundation, the interest of which will keep this organization. I think it would not be hard; if each state would put forth an effort and get a goodly number of members into this organization, we could soon accomplish this, and I should like to see it done. We ought to work up the membership to such an extent that we could do that. We have grown to a point today where we must in the very near future have some arrangement and have some man like Holcomb give his entire time to the business and affairs of the National Tax Association. We have grown to such extent and magnitude that this is necessary, in my opinion. We have imposed upon that man (Secretary Holcomb)

for years, and we could not live without him. That is my opinion. We owe so much to Holcomb, and I wish that it were possible for us to get so situated that we could get Holcomb to give his entire time to us, and that we should be able to pay him a salary that would keep him in that position. Those are some of the dreams that I would like to see come true, and I should like to see you, my friends, give sufficient time in your own states so that we can get a following that will accomplish that thing. Holcomb is not always going to be able to do what he has done for these many years.

My friends, I have had many honors come to me in my life in my own state, but I can truthfully say to you today that I never have had one honor given to me that I appreciate as much as I do the honor that you have given me today. I love the National Tax Association and its work. It is most interesting to me, and to occupy this position is a real honor that I prize very highly at this time.

I assure you that I shall give the position all that I possibly can and give the best that there is in me towards the upbuilding and forwarding of the interests of this association. I thank you.

Gentlemen, what will be your further pleasure? Have we found Dr. Adams?

SAMUEL LORD: I believe the Doctor is lost for the day.

VICE-PRESIDENT BAILEY: I think the Doctor knew what was coming. A motion to adjourn will be in order.

SAMUEL LORD: Mr. President, I move you that the association do now adjourn.

(Motion seconded)

(Final adjournment)

ATTENDANCE AT THE FIFTEENTH ANNUAL CONFERENCE

ALABAMA

Evans, A. A.	Montgomery
Jones, Jos. Brevard	Montgomery

ARIZONA

Dull, J. S.	Phoenix
Griffith, V. S.	Tucson
Hughes, E. A.	Phoenix
McGrath, T. O.	Bisbee

ARKANSAS

Vaughan, George	Little Rock

CALIFORNIA

Smith, Ralph W.	Sacramento

COLORADO

Correy, James	Denver
Link, C. P.	Denver
Merchant, G. H.	Delta
Perkins, F. A.	Colorado Springs
Spalding, George	Denver
Spalding, Mrs. George	Denver
Walpole, N. S.	Pueblo

CONNECTICUT

Adams, T. S.	New Haven
Fairchild, Fred R.	New Haven
Miller, Guy P.	Bridgeport

DISTRICT OF COLUMBIA

Colladay, E. F.	Washington
Colladay, Mrs. E. F.	Washington
Drake, C. A.	Washington
Sanders, J. T.	Washington
Speer, Luther F.	Washington

FLORIDA

Amos, Ernest	Tallahassee

GEORGIA

Lyle, Edward	Atlanta
Lyle, John N.	Atlanta
McPherson, J. H. T.	Athens

IDAHO

Humiston, W. D.	Potlatch
Kiersted, E. C.	Boise
Kiersted, Mrs. E. C.	Boise

ILLINOIS

Bogg, Harry B., Jr.	Chicago
Carlstrom, Oscar E.	Aledo
Coffin, P. B.	Chicago
Coffin, Mrs. P. B.	Chicago
Elliott, William S.	Chicago
Erickson, F. E.	Chicago
Erickson, Mrs. Dora	Chicago
Idarius, Mrs. C. M.	Chicago
Paddock, H. W.	Chicago
Polleys, T. A.	Chicago
Sayler, James L.	Chicago
Sayler, Mrs. James L.	Chicago
Sutherland, Douglas	Chicago
Telford, James D.	Salem
Viner, Jacob	Chicago
Watson, John C.	Chicago
Watson, William R.	Chicago
Winning, M. S.	Chicago
Winning, Mrs. M. S.	Chicago

INDIANA

Buskirk, Allen V.	Indianapolis
Foster, Samuel M.	Fort Wayne
Harrison, William C.	Indianapolis
Hough, William A.	Greenfield
Zoercher, Philip	Indianapolis

IOWA

Brindley, John E.	Ames
Burbank, W. J.	Des Moines
Davison, A. H.	Des Moines
Ramsay, W. C.	Des Moines
Smith, E. M.	Winterset
Sweany, E. W.	Des Moines
Sweany, Mrs. E. Mae	Des Moines
Van Alstine, H. S.	Gilmore City

KANSAS

Foster, C. D.	Ness City
Harper, H. D.	Wichita
Rowan, W. McD.	Topeka
Rowan, Mrs. W. McD.	Topeka
Smith, Clarence	Topeka

KENTUCKY	
Belknap, William B.	Goshen
Belknap, Mrs. William B.	Goshen
LOUISIANA	
Sneed, H. P.	New Orleans
MARYLAND	
Griffith, F. J.	Baltimore
Kriegh, McK. W.	Baltimore
Leser, Oscar	Baltimore
Murphy, L. S.	Chevy Chase
Ray, J. E.	Chillum
MASSACHUSETTS	
Alexander, Thornton	Boston
Bullock, C. J.	Cambridge
Gottlieb, Samuel	Dorchester
Holmes, Alexander	Kingston
Huse, J. W.	Melrose
Locke, John W.	Boston
Long, H. F.	Topsfield
Mathews, George W.	Dedham
Shaw, I. L.	Wollaston
Wakefield, Ed. E., Jr.	Boston
Wardwell, S. E.	Boston
White, Wm. P.	Lowell
MICHIGAN	
Barnes, O. F.	Lansing
Bromer, B. E.	Jackson
Burtless, B. F.	Lansing
Burtless, Mrs. B. F.	Lansing
Linton, W. S.	Saginaw
Lord, G.	Lansing
Vandenboom, F. H.	Marquette
MINNESOTA	
Adams, J. W., Jr.	Minneapolis
Allin, C. D.	Minneapolis
Ames, H. H., Jr.	Minneapolis
Anderson, P. O.	St. Paul
Anderson, William	Minneapolis
Armson, J. G.	Stillwater
Bacon, H. B.	St. Paul
Bartlett, Merrill	Minneapolis
Bell, James F.	Minneapolis
Benglson, J. P.	St. Paul
Brown, Dan C.	Minneapolis
Bruce, E. L.	Minneapolis
Buell, C. J.	St. Paul
Burton, Hazen J.	Minneapolis
Canty, Thos. A.	Minneapolis

Chadbourn, C. N.	Minneapolis
Cheney, Chas. B.	Minneapolis
Chute, W. Y.	Minneapolis
Crawford, F. L.	Minneapolis
Cullum, M. B.	Duluth
Danculovic, Eli, Jr.	Aurora
Erickson, Al. P.	Minneapolis
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Harris, W. L.	Minneapolis
Helsom, J. T.	Minneapolis
Holm, M. K.	St. Paul
Hornaday, H.	Minneapolis
Hosford, H. L.	St. Paul
Jackson, A. B.	Excelsior
Jones, W. S.	Minneapolis
Jordan, J. F.	Minneapolis
Kelly, George	St. Paul
Kunze, William F.	Minneapolis
Lambert, E. M.	Minneapolis
Lambie, Morris B.	Minneapolis
Latta, James A.	Minneapolis
Levin, John I.	St. Paul
Lindley, Clarkson	Minneapolis
Link, G. M.	Minneapolis
Lobb, Albert J.	Minneapolis
Lord, Samuel	St. Paul
McClintock, O. B.	Minneapolis
Manuel, Ralph W.	Minneapolis
Marclay, Mrs. Walter J.	Minneapolis
Melony, C. C.	Minneapolis
Moffett, C. T.	Minneapolis
Morice, Zalia I.	St. Paul
Mueller, William	St. Paul
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Murphy, Chas. T.	Aurora
Nelson, Herbert N.	Minneapolis
Nelson, N. A.	Stillwater
Neville, James E.	Minneapolis
Nolan, W. I.	Minneapolis
Nolte, Henry	Duluth
Olmstead, Rett E.	Excelsior
Olson, F. L.	Minneapolis
Olson, John A.	Minneapolis
Olson, S. E.	Minneapolis
Perrin, A. J.	Duluth

Phelan, Raymond J.	Minneapolis
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Phelps, T. L.	Rochester
Pusch, T. W.	St. Paul
Putnam, F. E.	Blue Earth
Reep, Samuel N.	Minneapolis
Richards, G. H.	Minneapolis
Rockwell, M. E.	Minneapolis
Sanders, M. T.	St. Paul
Scott, J. A.	Duluth
Scott, Mrs. J. A.	Duluth
Shaw, Frank W.	Minneapolis
Silban, Joseph Irving	Minneapolis
Slack, George	Duluth
Stuart, H. Arthur	Minneapolis
Thorpe, S. S.	Minneapolis
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Tscharner, W. B.	Minneapolis
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Warner, C. H.	Aitkin
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Wicker, George	St. Paul
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MISSOURI

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Phelps, E.	Kansas City
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Rowe, W. G.	St. Louis
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MONTANA

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Swartz, Charles	Butte
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Walker, J. W.	Helena

NEBRASKA

Hall, Chas. E.	Omaha
Hall, Mrs. Chas. E.	Omaha
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NEW HAMPSHIRE

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Matthews, Jos. S.	Concord
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Fettinger, Theo. S.	Newark
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Beattie, Edw. W.	New York
Bradfield, C. H.	New York
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Brown, Mrs. R. R.	New York
Brownell, G. G.	New York
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Doyle, Edw. P.	Brooklyn
Fernald, H. B.	New York
Goodwin, E. N.	New York
Haig, Robert M.	New York
Handy, Albert	New York
Holcomb, A. E.	New York
Howard, M. S.	Albany
Ivins, J. S. Y.	Albany
King, William H.	New York
Law, Walter W., Jr.	Albany
Law, Mrs. Walter W., Jr.	Albany
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Orcutt, B. S.	New York
Post, Clifford F.	New York
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Whitney, F. N.	New York

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Green, C. R.	Bismarck
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Plake, Mrs. C. T.	Tulsa

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Smith, J. S.	Dallas
Thompson, Joe C.	Dallas

UTAH

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Bailey, Edwin A.	Nephi
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Beatty, Mrs. Wm. N.	Salt Lake City
Brown, C. M.	Salt Lake City
Hyde, O. J.	Salt Lake City
Mackenzie, A. G.	Salt Lake City
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Butler, O. M.	Madison
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Grimm, Jay H.	River Falls
Harrington, John	Madison
Haugen, Nils P.	Madison
Kennan, K. K.	Milwaukee
Koester, E. J.	Milwaukee
Koester, Mrs. E. J.	Milwaukee
Leenhouts, John H.	Milwaukee
Lyons, T. E.	Madison
Rosa, Chas. D.	Madison
Simpson, H. D.	Madison
Simpson, Mrs. Herbert	Madison
Strader, F. D.	Madison
Titus, W. A.	Fond du lac

WYOMING

Groshon, Maurice	Cheyenne

CANADA

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Fraser, A. M.	Winnipeg
Hingley, E. G.	Regina
Leason, E. E.	Victoria
Nichol, R. R.	Winnipeg
MacGibbon, D. A.	Edmonton
Spence, W. D.	Edmonton
White, J. T.	Toronto

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